

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3412

To provide fundamental reform of the system and authority to regulate commercial exports, to enhance the effectiveness of export controls, to strengthen multilateral export control regimes, and to improve the efficiency of export regulation.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 1993

Mr. ROTH (for himself and Mr. OBERSTAR) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Ways and Means, and Rules

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## A BILL

To provide fundamental reform of the system and authority to regulate commercial exports, to enhance the effectiveness of export controls, to strengthen multilateral export control regimes, and to improve the efficiency of export regulation.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Commercial Export Administration Act of 1993”.

6       (b) TABLE OF CONTENTS.—

TABLE OF CONTENTS

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1 **SEC. 2. FINDINGS AND POLICY.**

2 (a) FINDINGS.—The Congress makes the following  
3 findings:

4 (1) The ability of United States citizens to en-  
5 gage in international commerce is a fundamental  
6 right, which is to be abridged only under specific  
7 conditions for critical national security or foreign  
8 policy reasons. In principle, exports of commercial  
9 goods and technology are unrestricted, except as  
10 specified in this Act.

11 (2) Exporting is critical to the economic health  
12 of the United States and, therefore, to its national  
13 security as well. With the growing importance of ex-  
14 ports to sustained United States economic growth  
15 and vitality, restrictions on exports should be consid-  
16 ered within the broader framework of the economic  
17 performance of the United States. Restrictions on  
18 commercial exports from the United States have had  
19 serious adverse effects on economic competitiveness  
20 and domestic employment, particularly when re-

1       straints applied by the United States are more ex-  
2       tensive than those imposed by other countries or  
3       when United States export control policy is uncer-  
4       tain.

5           (3) Traditional strategic threats of Warsaw  
6       Pact military capabilities have fundamentally  
7       changed; new security threats lie in the proliferation  
8       of weapons of mass destruction, that is, nuclear,  
9       chemical, and biological weapons, missiles, and ad-  
10      vanced delivery systems. Availability to certain coun-  
11      tries and endusers of items that contribute to mili-  
12      tary or proliferation potential is a fundamental con-  
13      cern of the United States and should be eliminated  
14      through negotiations and other appropriate means  
15      whenever possible.

16          (4) In order for export controls to be effective,  
17      they must be maintained multilaterally by supplier  
18      countries, and focused only on those commercial  
19      goods or technology that would directly, substan-  
20      tially, and materially contribute to the military or  
21      proliferation potential of countries or endusers pos-  
22      ing a strategic threat to the United States. Ad hoc  
23      approaches to export controls are no longer suffi-  
24      cient. Greater coordination, formalization, simplifica-

1       tion, and consolidation of existing multilateral export  
2       control regimes are necessary.

3           (5) Unilateral controls are not effective in  
4       changing the actions or policies of other govern-  
5       ments. Unilateral emergency controls should only be  
6       imposed temporarily in order to allow time to seek  
7       multilateral support. If negotiations fail, emergency  
8       controls should expire, unless a further extension is  
9       approved by the Congress or the emergency controls  
10      are upgraded to an embargo.

11          (6) In order for export controls to be effective,  
12      United States exporters and the United States Gov-  
13      ernment must work closely together in developing,  
14      implementing, harmonizing, and enforcing export  
15      controls. The Government must clearly and specifi-  
16      cally define which items are controlled to which spe-  
17      cific destinations and endusers. Effectiveness of ex-  
18      port controls is largely based on voluntary compli-  
19      ance by the exporting public; it is, therefore, impera-  
20      tive that industry be clearly informed in a timely  
21      fashion about export control regulations and policies,  
22      and that United States exporters know their cus-  
23      tomers and, to the greatest extent practicable, the  
24      ultimate destination of their products.

1           (7) Export controls cannot, by themselves, stop  
2           the development of capabilities to produce weapons  
3           of mass destruction. Export controls should, there-  
4           fore, be applied as part of a well-reasoned, com-  
5           prehensive national response to security threats, tak-  
6           ing into account the limitations and the realities of  
7           whether goods or technology are controllable.

8           (8) The residual Cold War system of export  
9           controls faces basic problems that hamper the effec-  
10          tiveness of export controls and unnecessarily im-  
11          pedes legitimate United States commercial exports.  
12          The United States export control system must be  
13          fundamentally and substantially reformed to address  
14          more effectively the current security challenges and  
15          to achieve the goals of an effective and efficient ex-  
16          port control program.

17          (b) POLICY.—It is the policy of the United States—

18               (1) to encourage and support trade with all  
19               countries with which the United States has diplo-  
20               matic or trading relations;

21               (2) that exports of commercial goods and tech-  
22               nology are unrestricted, to be abridged only for criti-  
23               cal national security or foreign policy reasons to the  
24               extent provided in this Act;

1           (3) that absent the requirement for a validated  
2           license, as indicated by the inclusion of specific  
3           goods and technology on the export control index to  
4           specified countries and endusers, no authority or  
5           permission to export is required;

6           (4) to minimize unnecessary restrictions and  
7           uncertainty in export control policy;

8           (5) to apply any necessary export controls in  
9           cooperation with other supplier nations as part of  
10          multilateral export control regimes under section 4,  
11          and to strengthen such efforts to better coordinate,  
12          formalize, and even consolidate national export con-  
13          trol policies;

14          (6) to impose unilateral controls, under the pro-  
15          cedures and conditions set forth in section 5, only in  
16          response to an immediate and extraordinary threat  
17          to the national security or foreign policy of the Unit-  
18          ed States, and only after full consideration of the  
19          economic impact of the controls and their effective-  
20          ness in achieving the intended objectives, and for a  
21          limited time in order to negotiate for multilateral  
22          controls;

23          (7) to restrict the export or reexport of only  
24          those commercial goods and technology that would  
25          directly, substantially, and materially—

1 (A) contribute to the military potential of  
2 countries posing a strategic threat to the Unit-  
3 ed States, or

4 (B) enable a country or enduser to acquire  
5 the capability to develop, produce, stockpile,  
6 use, or deliver weapons of mass destruction, but  
7 only if such goods and technology are control-  
8 lable;

9 (8) to administer export controls consistent  
10 with basic standards of due process and to provide  
11 specific guidelines to United States exporters,  
12 through the publication of regulations, public no-  
13 tices, and advisory opinions with respect to goods,  
14 technology, sectors, license processing policies and  
15 practices, destinations, and endusers subject to spe-  
16 cific types of controls or exemptions from controls;  
17 and

18 (9) to consolidate and simplify the regulation,  
19 reporting, and documentation required of exporters.

20 **SEC. 3. GENERAL PROVISIONS.**

21 (a) RIGHT OF EXPORT.—No authority or permission  
22 to export commercial goods and technology may be re-  
23 quired under this Act or any other provision of law (other  
24 than the Atomic Energy Act of 1954), except as provided

1 in sections 4 and 5 of this Act and in sections 7 and 8(b)  
2 of the Export Administration Act of 1979.

3 (b) UNITED STATES COMMERCIAL EXPORT CONTROL  
4 INDEX.—

5 (1) IN GENERAL.—The Secretary shall—

6 (A) establish and maintain a United States  
7 Commercial Export Control Index which shall  
8 identify all commercial goods or technology on  
9 which controls are imposed under this Act;

10 (B) specify the license requirements appli-  
11 cable to the items on the control index; and

12 (C) designate countries and endusers to  
13 which exports and reexports of commercial  
14 goods and technology are controlled.

15 (2) CONTENTS.—The control index shall—

16 (A) consist of a security control list of all  
17 commercial goods and technology on which ex-  
18 port and reexport controls are imposed under  
19 section 4, and an emergency control list of all  
20 goods and technology on which export and reex-  
21 port controls are imposed under section 5;

22 (B) for each item on the control index,  
23 specify with particularity the performance and  
24 other identifying characteristics of the item and



1 provide a rationale for why the item is on the  
2 control list;

3 (C) identify countries and endusers to  
4 which exports are reexports are controlled, in-  
5 cluding specific projects and endusers of con-  
6 cern, cross-referenced with the list of goods and  
7 technology on which export and reexport con-  
8 trols are imposed; and

9 (D) be sufficiently specific and clear as to  
10 guide exporters and licensing officers in deter-  
11 minations of licensing requirements under this  
12 Act.

13 (3) LICENSING OF CONTROL INDEX GOODS AND  
14 TECHNOLOGY.—A validated license may be required  
15 for the export or reexport of those commercial goods  
16 and technology that are specifically and clearly iden-  
17 tified on the control index to countries and endusers  
18 so designated on the control index. No authority or  
19 permission may be required to export or reexport  
20 commercial goods and technology not so identified to  
21 any country or enduser not so designated.

22 (4) REVIEW OF INDEX.—

23 (A) IN GENERAL.—The Secretary shall re-  
24 view all goods and technology on the control  
25 index maintained under paragraph (1) at least

1 annually. This review shall apply to the removal  
2 of items from the control index or changes in  
3 specifications of items on the control index. The  
4 Secretary shall use the data developed from  
5 such reviews in formulating United States pro-  
6 posals for revision of multilateral controls in  
7 COCOM and other export control regimes de-  
8 scribed in section 4.

9 (B) CONSIDERATIONS.—In conducting the  
10 annual review, the Secretary shall—

11 (i) consult with the appropriate indus-  
12 try advisory committees appointed under  
13 section 6(d) and consider—

14 (I) recommendations of such  
15 committees with respect to proposed  
16 changes in the control index; and

17 (II) proposals of such committees  
18 for the removal, by the date on which  
19 the applicable export control regime  
20 would implement such removal, of li-  
21 censing requirements under this Act  
22 for goods or technology which are an-  
23 ticipated to be widely available from  
24 countries that are not members of  
25 that export control regime as a result

1 of advances in the technological per-  
2 formance levels of such goods or tech-  
3 nology;

4 (ii) consider the results of foreign  
5 availability determinations made under  
6 subsection (g);

7 (iii) consider comments received pur-  
8 suant to the notice of review provided  
9 under subparagraph (C)(ii); and

10 (iv) consult with other departments or  
11 agencies as the Secretary considers appro-  
12 priate.

13 (C) PROCEDURES.—

14 (i) DURATION OF REVIEW.—The an-  
15 nual review required under subparagraph  
16 (A) may not extend beyond 180 days after  
17 such review is begun.

18 (ii) NOTICE OF REVIEW.—Before be-  
19 ginning each annual review, the Secretary  
20 shall publish a notice of that review in the  
21 Federal Register and shall provide a 30-  
22 day period for comments and submission  
23 of data, with or without oral presentation,  
24 by interested Government agencies, export-  
25 ers, and other interested parties.

1 (iii) REVISIONS.—The Secretary shall  
2 make a determination of any revisions in  
3 the control index not later than 30 days  
4 after the end of the review period. The  
5 concurrence or approval of any other de-  
6 partment or agency shall not be required  
7 before any such revision is made. The Sec-  
8 retary shall publish in the Federal Register  
9 any revisions in the list, with an expla-  
10 nation of the reasons for the revisions.

11 (5) INDEXING.—The Secretary shall develop,  
12 with the assistance of the industry advisory commit-  
13 tees established under section 6(d), methodologies  
14 and procedures for indexing products where per-  
15 formance capabilities are measurable. Such meth-  
16 odologies and procedures shall provide for increases  
17 in the performance levels of goods and technology on  
18 the control index and shall provide for the technical  
19 specifications below which no authority or permis-  
20 sion to export or reexport is required as compared  
21 to the most technologically advanced commercially  
22 available version of the same or equivalent goods or  
23 technology. Such methodologies and procedures shall  
24 be published and used in the annual list review of  
25 the control index under paragraph (4).

1 (c) ISSUANCE OF REGULATIONS.—

2 (1) IN GENERAL.—The Secretary may issue  
3 such regulations as are necessary to carry out this  
4 Act.

5 (2) PUBLIC PARTICIPATION.—Unless dem-  
6 onstrated as impracticable, all regulations imposing  
7 controls on exports under this Act shall be issued in  
8 proposed form with opportunity for public comment  
9 before taking effect. If a regulation imposing con-  
10 trols under this Act is issued with immediate effect,  
11 opportunity for public comment shall also be pro-  
12 vided and the regulation shall be reissued in final  
13 form after public comments have been fully consid-  
14 ered.

15 (3) REPORT.—The Secretary shall report to the  
16 Committee on Banking, Housing, and Urban Affairs  
17 of the Senate and the Committee on Foreign Affairs  
18 of the House of Representatives on the intent and  
19 rationale of all proposed regulations under this Act  
20 and any proposed amendments to regulations issued  
21 under this Act. Such report shall thoroughly evalu-  
22 ate the costs and burden imposed on United States  
23 exporters of the proposed regulations or amend-  
24 ments in relation to any enhancement of export li-  
25 censing objectives.

1           (4) CONSULTATION.—The Secretary shall, in  
2     formulating or amending regulations issued under  
3     this Act, consult with the industry advisory commit-  
4     tees authorized under section 6(d) before such regu-  
5     lations or amendments are issued. The Secretary, in  
6     consultation with appropriate industry advisory com-  
7     mittees, shall review the regulations issued under  
8     this Act in order to simplify and clarify such regula-  
9     tions.

10    (d) PUBLICATION OF ACTIONS.—

11           (1) DECISIONS AND ACTIONS OF THE SEC-  
12    RETARY—

13           (A) IN GENERAL.—The Secretary shall  
14    publish in the Federal Register, to the greatest  
15    extent practicable, actions, procedures, and de-  
16    cisions of the Secretary under this Act, taking  
17    into account restrictions on disclosure of classi-  
18    fied or confidential information. The following  
19    determinations of the Secretary shall in every  
20    case be published in the Federal Register, un-  
21    less a private party requested the determination  
22    and asked that it not be published:

23           (i) Classification of a good or tech-  
24    nology on the control index.

1                   (ii) Calculation of a commonly-used  
2                   control index parameter for a good or tech-  
3                   nology, including all officially accepted  
4                   composite theoretical performance calcula-  
5                   tions for computers and microprocessors.

6                   (B) NOTICE OF REVISIONS.—Whenever the  
7                   Secretary makes any revision in the control  
8                   index with respect to any good or technology, or  
9                   with respect to any country or destination af-  
10                  fected by controls imposed under section 4 or  
11                  section 5, the Secretary shall publish in the  
12                  Federal Register a notice of such revision and  
13                  shall specify in such notice under which author-  
14                  ity the revision is being made.

15                  (2) EXPORT CONTROL REGIME ACTIONS.—

16                  (A) IN GENERAL.—Not more than 90 days  
17                  after the date of the enactment of this Act, the  
18                  Secretary shall publish the full text of each  
19                  International List of COCOM, together with all  
20                  notes and understandings concerning such lists  
21                  that are agreed to by COCOM, and the lists  
22                  and all notes and understandings of all other  
23                  export control regimes. The Secretary shall up-  
24                  date the publication under the preceding sen-  
25                  tence at least once in each 1-year period occur-

1 ring after the original publication under this  
2 subparagraph.

3 (B) CONTENTS.—The Secretary shall pub-  
4 lish—

5 (i) the full text of any agreements of  
6 COCOM affecting the International Lists,  
7 and any agreements of other export control  
8 regimes of which the United States is a  
9 member, together with all notes, under-  
10 standings, and other aspects of such agree-  
11 ments and all revisions to such texts;

12 (ii) subject to the limitations set forth  
13 in subsection (f), decisions on requests for  
14 general exceptions to the Industrial List  
15 portion of the International Lists of  
16 COCOM, and decisions on exceptions for  
17 exports permitted by such other export  
18 control regimes;

19 (iii) other decisions made by COCOM,  
20 and other actions and decisions of such  
21 other export control regimes, to the maxi-  
22 mum extent possible; and

23 (iv) lists of controlled countries and  
24 controlled endusers, projects of concern  
25 with respect to the capability described in



1 section 2(b)(7)(B), unreliable practices  
2 with respect to items on which export or  
3 reexport controls are imposed under this  
4 Act, and persons to whom sanctions have  
5 been applied, or whose export privileges  
6 have been denied, under this Act.

7 (C) TIMING.—Such publication shall be  
8 made not more than 30 days after the agree-  
9 ments are reached, or the decisions are made,  
10 as the case may be.

11 (D) EXCEPTION.—The publication of a  
12 particular matter need not be made under this  
13 paragraph to the extent that the Secretary sub-  
14 mits a written finding to the Congress that to  
15 publish that matter would be contrary to na-  
16 tional or international security, would abridge  
17 the confidentiality of the decision-making proc-  
18 esses of COCOM or another export control re-  
19 gime, or would otherwise be inconsistent with  
20 the obligations of the United States to COCOM  
21 or another export control regime.

22 (e) NOTIFICATION OF THE PUBLIC; CONSULTATION  
23 WITH INDUSTRY; RECORDKEEPING.—

24 (1) NOTIFICATION OF THE PUBLIC.—The Sec-  
25 retary shall keep the public fully apprised of changes

1 in export control policy and procedures instituted  
2 under this Act with a view to encouraging trade.

3 (2) CONSULTATION WITH INDUSTRY.—The Sec-  
4 retary shall meet regularly with industry advisory  
5 committees appointed under section 6(d) in order to  
6 obtain their views on United States export control  
7 policy and the foreign availability of commercial  
8 goods and technology.

9 (3) REVIEW OF REPORTING REQUIREMENTS.—  
10 In the administration of this Act, reporting require-  
11 ments shall be designed so as to reduce the cost of  
12 reporting, recordkeeping, and export documentation  
13 required under this Act, to the extent feasible and  
14 consistent with effective enforcement and compila-  
15 tion of useful trade statistics. Reporting, record-  
16 keeping, and export documentation requirements  
17 shall be periodically reviewed and revised in the light  
18 of developments in the field of information tech-  
19 nology.

20 (f) CONFIDENTIALITY OF INFORMATION.—

21 (1) EXEMPTIONS FROM DISCLOSURE.—Except  
22 as provided in paragraph (2), information obtained  
23 by the Secretary under this Act or under previous  
24 Acts regarding the control of exports, including any  
25 report, export license application, or classification re-

1       quest which is deemed confidential, or with reference  
2       to which a request for confidential treatment is  
3       made by the person furnishing such information,  
4       shall be exempt from disclosure under section 552 of  
5       title 5, United States Code, and such information  
6       shall not be published or disclosed unless the Sec-  
7       retary determines that the withholding thereof is  
8       contrary to the national interest.

9               (2) INFORMATION TO CONGRESS AND GAO.—

10              (A) IN GENERAL.—Nothing in this Act  
11              shall be construed as authorizing the withhold-  
12              ing of information from the Congress or from  
13              the General Accounting Office.

14              (B) AVAILABILITY TO THE CONGRESS.—

15              (i) IN GENERAL.—All information ob-  
16              tained at any time under this Act or pre-  
17              vious Acts regarding the control of exports,  
18              including any report or export license ap-  
19              plication required under this Act, shall be  
20              made available to any committee or sub-  
21              committee of Congress of appropriate ju-  
22              risdiction upon request of the chairman or  
23              ranking minority member of such commit-  
24              tee or subcommittee.

1           (ii) PROHIBITION ON FURTHER DIS-  
2           CLOSURE.—No such committee or sub-  
3           committee, or member thereof, shall dis-  
4           close any information obtained under this  
5           Act or previous Acts regarding the control  
6           of exports which is submitted on a con-  
7           fidential basis unless the full committee de-  
8           termines that the withholding of that infor-  
9           mation is contrary to the national interest.

10          (C) AVAILABILITY TO THE GAO.—

11           (i) IN GENERAL.—Notwithstanding  
12           paragraph (1), information referred to in  
13           subparagraph (B) shall, consistent with  
14           the protection of intelligence, counterintel-  
15           ligence, and law enforcement sources,  
16           methods, and activities, as determined by  
17           the agency that originally obtained the in-  
18           formation, and consistent with the provi-  
19           sions of section 716 of title 31, United  
20           States Code, be made available only by  
21           that agency, upon request, to the Comp-  
22           troller General of the United States or to  
23           any officer or employee of the General Ac-  
24           counting Office authorized by the Comp-

1 troller General to have access to such in-  
2 formation.

3 (ii) PROHIBITION ON FURTHER DIS-  
4 CLOSURE.—No officer or employee of the  
5 General Accounting Office shall disclose,  
6 except to the Congress in accordance with  
7 this paragraph, any such information  
8 which is submitted on a confidential basis  
9 and from which any individual can be iden-  
10 tified.

11 (3) PENALTIES FOR DISCLOSURE OF CON-  
12 FIDENTIAL INFORMATION.—Any officer or employee  
13 of the United States, or any department or agency  
14 thereof, who publishes, divulges, discloses, or makes  
15 known in any manner or to any extent not author-  
16 ized by law any information to which such officer or  
17 employee gains access in the course of his or her em-  
18 ployment or official duties or by reason of any exam-  
19 ination or investigation made by, or report or record  
20 made to or filed with, such department or agency,  
21 or officer or employee thereof, if such information is  
22 exempt from disclosure under this subsection, shall  
23 be fined not more than \$25,000, or imprisoned not  
24 more than 1 year, or both, and shall be removed  
25 from office or employment.

1 (g) FOREIGN AVAILABILITY.—

2 (1) IN GENERAL.—Except when the President  
3 determines that the absence of controls under this  
4 Act would prove detrimental to the national security  
5 of the United States—

6 (A) the Secretary shall not impose controls  
7 under this Act on commercial goods or tech-  
8 nology with respect to which it is determined  
9 that there is foreign availability; and

10 (B) in the case of any commercial goods or  
11 technology with respect to which it is deter-  
12 mined that there is foreign availability, the Sec-  
13 retary shall either—

14 (i) eliminate controls imposed under  
15 this Act on such goods or technology; or

16 (ii) in the case of goods or technology  
17 the export or reexport of which is con-  
18 trolled under the terms of an export con-  
19 trol regime, propose elimination of export  
20 and reexport controls to countries partici-  
21 pating in the regime and eliminate such  
22 controls to the extent such countries agree  
23 to such elimination.

24 (2) FOREIGN AVAILABILITY REVIEW.—The Sec-  
25 retary, in consultation with appropriate industry ad-

1 visory committees appointed under section 6(d),  
2 shall review and monitor on a continuing basis the  
3 foreign availability of any commercial goods or tech-  
4 nology on which controls are or may be imposed  
5 under this Act. In so doing, the Secretary shall con-  
6 sider the availability of such goods or technology,  
7 and the anticipated availability of such goods and  
8 technology within 6 months, within and to controlled  
9 countries and countries other than controlled coun-  
10 tries from sources outside the United States, and  
11 the extent to which any such source country places  
12 and enforces controls on the export of such goods or  
13 technology to controlled countries. The Secretary  
14 shall not consider the availability under license from  
15 a country which maintains export controls on such  
16 goods or technology cooperatively with the United  
17 States pursuant to the agreement of COCOM or  
18 other export control regimes, unless the Secretary  
19 determines that the export restrictions maintained  
20 by such country are ineffective.

21 (3) PROCEDURES FOR FOREIGN AVAILABILITY  
22 DETERMINATIONS.—

23 (A) IN GENERAL.—The United States  
24 International Trade Commission (hereafter in  
25 this subsection referred to as the “ITC”) is

1 solely responsible for making foreign availability  
2 determinations of goods and technology under  
3 this Act. The ITC may undertake a foreign  
4 availability assessment at any time upon its  
5 own initiative, and shall undertake a foreign  
6 availability assessment upon a written request  
7 by the Secretary, or upon receipt of a written  
8 allegation supported by reasonable evidence  
9 from the appropriate industry advisory commit-  
10 tee under section 6(d) or a United States per-  
11 son that such availability exists.

12 (B) NOTICE REQUIREMENTS.—Whenever  
13 the ITC undertakes a foreign availability as-  
14 sessment under this subsection, the ITC shall  
15 publish notice of such assessment in the Fed-  
16 eral Register. Not later than 4 months after  
17 initiating such an assessment, the ITC shall de-  
18 termine whether the foreign availability exists,  
19 and shall submit for publication in the Federal  
20 Register a notice of its determination, together  
21 with a concise statement of the basis for its de-  
22 termination. The ITC shall also forward a writ-  
23 ten notice of its determination to the Secretary.

24 (C) ACTION BY THE SECRETARY.—Not  
25 later than 30 days after receipt of a determina-



1           tion by the ITC that foreign availability exists  
2           with respect to a commercial good or tech-  
3           nology, the Secretary shall either—

4                   (i) eliminate controls under this Act  
5                   on such commercial good or technology  
6                   and publish a notice of such action in the  
7                   Federal Register;

8                   (ii) in the case of a commercial good  
9                   or technology controlled under the terms of  
10                  export control regime, propose the elimi-  
11                  nation of controls on such commercial good  
12                  or technology in accordance with the proce-  
13                  dures of such regime and publish a notice  
14                  of such proposal in the Federal Register;  
15                  or

16                  (iii) in any case in which the Presi-  
17                  dent determines that controls under this  
18                  Act must be maintained notwithstanding  
19                  the foreign availability because the absence  
20                  of such controls would prove detrimental to  
21                  the national security of the United States,  
22                  publish a notice of that determination in  
23                  the Federal Register, together with a con-  
24                  cise statement of the basis for that deter-  
25                  mination and the estimated economic im-

1           pact of the decision, and a statement that  
2           the applicable steps are being taken under  
3           paragraph (4).

4           (4) NEGOTIATIONS TO ELIMINATE FOREIGN  
5           AVAILABILITY.—

6           (A) IN GENERAL.—In any case in which  
7           export controls are maintained on a commercial  
8           good or technology notwithstanding foreign  
9           availability on account of a determination by  
10          the President that the absence of controls under  
11          this Act would prove detrimental to the national  
12          security of the United States, the Secretary  
13          shall actively pursue negotiations with the gov-  
14          ernments of the countries which are the sources  
15          of the good or technology for the purpose of  
16          eliminating the foreign availability.

17          (B) REMOVAL OF CONTROLS.—If, not later  
18          than 6 months after the determination by the  
19          President described in subparagraph (A), the  
20          foreign availability of the good or technology  
21          has not been eliminated, the Secretary shall re-  
22          move export or reexport controls from the good  
23          or technology under this Act and publish notice  
24          of such action in the Federal Register.

1           (C) EFFECT OF AGREEMENT.—After an  
2           agreement is reached with a country pursuant  
3           to negotiations under this paragraph to elimi-  
4           nate foreign availability of commercial goods or  
5           technology, the Secretary may not require a  
6           validated license under this Act for the export  
7           of such commercial goods or technology to that  
8           country.

9           (5) SHARING OF INFORMATION.—Each depart-  
10          ment or agency of the United States, including any  
11          intelligence agency, and all contractors with any  
12          such department or agency, shall, upon the request  
13          of the Secretary or the ITC and consistent with the  
14          protection of intelligence sources and methods and  
15          safeguarding of classified information, furnish infor-  
16          mation to the ITC concerning foreign availability of  
17          goods and technology subject to export controls  
18          under this Act. Each such department or agency  
19          shall allow the ITC access to any such information  
20          from a laboratory or other facility within such de-  
21          partment or agency.

22          (6) REMOVAL OF CONTROLS ON LESS SOPHISTI-  
23          CATED GOODS OR TECHNOLOGY.—In any case in  
24          which export or reexport controls are removed from  
25          commercial goods or technology under this sub-

1 section, then such controls may not be imposed or  
2 maintained on any similar commercial goods or tech-  
3 nology whose function, technological approach, per-  
4 formance thresholds, and other attributes that form  
5 the basis for controls under this Act do not exceed  
6 the technical parameters of the commercial goods or  
7 technology from which the controls are removed  
8 under this subsection.

9 (7) REPORT OF DETERMINATIONS AND AC-  
10 TIONS.—Not later than 10 days after any deter-  
11 mination by the ITC under paragraph (3)(B), or in  
12 the case of determination of the President under  
13 paragraph (3)(C)(iii), not later than 10 days after  
14 the initiation of negotiations under paragraph  
15 (4)(A), the Secretary shall submit a report to the  
16 Committee on Banking, Housing, and Urban Affairs  
17 of the Senate and the Committee on Foreign Affairs  
18 of the House of Representatives setting forth a de-  
19 tailed explanation of the determination of the ITC  
20 and the determination of the President (if applica-  
21 ble), and the implications of such determinations.

22 **SEC. 4. NATIONAL SECURITY CONTROLS.**

23 (a) AUTHORITY.—

24 (1) IN GENERAL.—In order to carry out the  
25 policy set forth in section 2(b)(7), the President

1 may, in accordance with this section, prohibit or cur-  
2 tail the export and reexport of any commercial goods  
3 or technology subject to the jurisdiction of the Unit-  
4 ed States, if such goods and technology would—

5 (A) directly, substantially, and materially  
6 contribute to the military capability of countries  
7 or endusers posing a strategic threat to the  
8 United States; or

9 (B) directly, substantially, and materially  
10 enable a country or enduser to acquire the ca-  
11 pability to develop, produce, stockpile, use, or  
12 deliver weapons of mass destruction.

13 (2) EXERCISE OF AUTHORITY.—The authority  
14 granted by this subsection shall be exercised by the  
15 Secretary, and shall be implemented by means of ex-  
16 port licenses issued by the Secretary.

17 (b) SECURITY CONTROL LIST.—

18 (1) IN GENERAL.—The Secretary shall establish  
19 and maintain, as part of the control index estab-  
20 lished under section 3(b), a security control list,  
21 comprised of all commercial goods or technology on  
22 which export and reexport controls are in effect  
23 under this section, and the countries or endusers to  
24 which the controls apply. The security control list  
25 shall clearly identify the specific commercial goods

1 and technology the export or reexport of which is  
2 controlled, and each country and enduser to which  
3 such exports and reexports are controlled. Such list  
4 shall be reviewed and updated at least once every 12  
5 months.

6 (2) CONTROLLED GOODS AND TECHNOLOGY.—  
7 Export or reexport controls may be imposed under  
8 this section only on commercial goods and tech-  
9 nology that are controllable, only if the controls  
10 would be effective in restricting the capabilities set  
11 forth in subsection (a)(1), and only if—

12 (A) the export controls are imposed pursu-  
13 ant to an export control regime, such as  
14 COCOM, the MTCR, the Australia Group, the  
15 Nuclear Suppliers Group, or any export control  
16 regime entered into by the United States under  
17 subsection (d)(3); or

18 (B) in the absence of an applicable export  
19 control regime, no foreign availability of such  
20 goods or technology exists.

21 (3) DESIGNATED COUNTRIES AND  
22 ENDUSERS.—In administering export controls under  
23 this section, the Secretary shall, for each good and  
24 technology listed on the security control list, des-  
25 ignate the specific countries and endusers for which

1 export licenses or reexport authorizations are re-  
2 quired. These countries and endusers may include  
3 only—

4 (A) controlled countries and controlled  
5 endusers; and

6 (B) non-regime countries with respect to  
7 the export control regime which controls the ex-  
8 port of such good and technology.

9 (4) CONTROLLED COUNTRIES AND  
10 ENDUSERS.—A country may be designated a con-  
11 trolled country, and an enduser may be designated  
12 a controlled enduser, with respect to a particular  
13 good or technology on the security control list only  
14 if exports of such good or technology to such country  
15 or enduser are controlled cooperatively pursuant to  
16 the agreement of an export control regime, and only  
17 if such country or enduser—

18 (A) has military capabilities, policies, or  
19 activities which represent a direct strategic  
20 threat to the national security of the members  
21 of the export control regime; or

22 (B) is engaged in or is deliberately assist-  
23 ing another controlled country or enduser in the  
24 design, development, production, stockpiling,  
25 use, or delivery of weapons of mass destruction.

1           (5) REVISION OF DESIGNATION OF CON-  
2       TROLLED COUNTRIES AND ENDUSERS.—

3           (A) CONTROLLED COUNTRIES.—In any  
4       case in which a controlled country—

5           (i) adopts military policies that rep-  
6       resent a lesser strategic threat to members  
7       of the appropriate export control regime;

8           (ii) terminates efforts to acquire  
9       weapons of mass destruction and adopts  
10      policies consistent with international ef-  
11      forts to restrict the proliferation of weap-  
12      ons of mass destruction;

13          (iii) terminates activities that would  
14      assist the capabilities of other controlled  
15      countries in those activities described in  
16      paragraph (4)(B); or

17          (iv) agrees to adhere to policies and  
18      practices of the appropriate export control  
19      regime and implements an effective export  
20      control system;

21      such that the reasons for its being designated  
22      a controlled country cease to exist, the Sec-  
23      retary shall propose to the appropriate export  
24      control regime to remove the country's designa-  
25      tion as a controlled country. Upon the removal



1 of such designation by the export control re-  
2 gime, the Secretary shall, with respect to the  
3 commercial goods and technology which are  
4 controlled under this section pursuant to the  
5 agreement of that regime, change the designa-  
6 tion of the country on the security control list  
7 from a controlled country to a non-regime coun-  
8 try. If the country also agrees to participate in  
9 or be a cooperating country with respect to the  
10 export control regime, the Secretary shall re-  
11 move such country from the security control  
12 list.

13 (B) CONTROLLED ENDUSERS.—In any  
14 case in which a controlled enduser—

15 (i) ceases to engage in the design, de-  
16 velopment, production, stockpiling, use, or  
17 delivery of weapons of mass destruction; or

18 (ii) terminates activities that would  
19 assist the capabilities of controlled coun-  
20 tries in those activities described in para-  
21 graph (4)(B);

22 such that the reasons for its being designated  
23 a controlled enduser cease to exist, the Sec-  
24 retary shall propose to the appropriate export  
25 control regime to remove the enduser's designa-

1           tion as a controlled enduser. Upon the removal  
2           of such designation by the export control re-  
3           gime, the Secretary shall, with respect to the  
4           commercial goods and technology which are  
5           controlled under this section pursuant to agree-  
6           ment of that regime, remove that enduser from  
7           the security control list.

8           (c) EXPORT LICENSING POLICIES FOR DESIGNATED  
9 COUNTRIES AND CONTROLLED ENDUSERS.—

10           (1) EXPORTS TO CONTROLLED COUNTRIES AND  
11 ENDUSERS.—

12           (A) IN GENERAL.—Except as provided in  
13           subsection (d)(5), the Secretary shall require  
14           authority or permission to export or reexport  
15           goods and technology on the security control  
16           list to controlled countries and controlled  
17           endusers.

18           (B) PRESUMPTION OF DENIAL FOR CON-  
19 TROLLED ENDUSERS.—Exports and reexports  
20 to controlled endusers in controlled countries of  
21 goods or technology on which controls are in ef-  
22 fect under this section shall carry a presump-  
23 tion of denial if such requirement is the policy  
24 of the export control regime controlling the  
25 goods or technology. In the negotiations re-

1           quired by subsection (d)(1), the Secretary shall  
2           seek agreement on such a policy by every export  
3           control regime.

4           (C) CASE-BY-CASE REVIEW FOR OTHER  
5           ENDUSERS.—Exports and reexports to  
6           endusers, other than controlled endusers, in  
7           controlled countries of goods or technology on  
8           which controls are in effect under this section  
9           shall be subject to case-by-case license review by  
10          the Secretary and shall be submitted for multi-  
11          lateral review if required by the export control  
12          regime controlling the goods or technology.

13          (2) EXPORTS TO NON-REGIME COUNTRIES.—

14          (A) IN GENERAL.—Except as provided in  
15          subsection (d)(5), the Secretary may, in his or  
16          her discretion, require authority or permission  
17          to export or reexport to endusers in non-regime  
18          countries goods or technology on which controls  
19          are in effect under this section if—

20                  (i) such requirement is the policy of  
21                  the export control regime controlling the  
22                  goods or technology, for exports of such  
23                  goods and technology to non-regime coun-  
24                  tries; and

1           (ii) the Secretary has determined that  
2           the unrestricted export of such goods or  
3           technology to such non-regime country  
4           would directly, substantially, and materi-  
5           ally contribute to the military capability of  
6           a controlled country or enduser described  
7           in subsection (a)(1)(A), or to the capability  
8           of a controlled country or enduser de-  
9           scribed in subsection (a)(1)(B), through  
10          the threat of diversion or other means.

11          (B) EXCEPTION.—Notwithstanding clause  
12          (i) of subparagraph (A), for a period of 18  
13          months beginning on the effective date of this  
14          Act, the Secretary may require a license for the  
15          export or reexport to any non-regime country of  
16          any good or technology controlled under sub-  
17          section (b)(2). During such period, the Sec-  
18          retary shall engage in negotiations with other  
19          members of the export control regime control-  
20          ling the good or technology for the purpose of  
21          developing a common list of controlled countries  
22          and controlled endusers, and a common policy  
23          on exports to non-regime countries. After the  
24          end of such 18-month period, export controls on

1 such good or technology may be imposed only  
2 under subparagraph (A) or under section 5.

3 (C) LICENSING TREATMENT.—(i) Exports  
4 and reexports to non-regime countries of goods  
5 and technology on which controls are in effect  
6 under this section shall be considered on a na-  
7 tional discretion basis.

8 (ii) Exports to endusers in non-regime  
9 countries other than controlled endusers shall  
10 carry a presumption of approval.

11 (iii) Exports to controlled endusers in non-  
12 regime countries shall be reviewed on a case-by-  
13 case basis and shall be submitted for multilat-  
14 eral review if required by the export control re-  
15 gime controlling the good or technology.

16 (iv) The Secretary shall pursue negotia-  
17 tions with countries participating in export con-  
18 trol regimes to achieve a consistent and effec-  
19 tive multilateral approach to exports to non-re-  
20 gime countries.

21 (D) NEGOTIATIONS TO ENHANCE CO-  
22 OPERATION.—The Secretary shall pursue nego-  
23 tiations with non-regime countries regarding  
24 their cooperation in restricting the export of  
25 goods and technology consistent with the pur-

1 poses of those export control regimes controlling  
2 such exports. The goal of such negotiations  
3 shall be to produce agreements with such coun-  
4 tries under which such countries impose export  
5 restrictions consistent with the objectives set  
6 forth in subsection (d)(1).

7 (E) REVIEW OF AGREEMENTS.—The Sec-  
8 retary shall review annually any agreement  
9 reached pursuant to subparagraph (D). If the  
10 Secretary determines that a country is not ad-  
11 hering to the terms of such an agreement with  
12 the United States, the Secretary may restrict or  
13 eliminate any preferential licensing treatment  
14 for exports to that country provided under the  
15 agreement and shall notify other members of  
16 the appropriate export control regime of such  
17 action.

18 (F) SANCTIONS.—If the Secretary deter-  
19 mines that a non-regime country or an enduser  
20 in a non-regime country is exporting to a con-  
21 trolled country or controlled enduser goods or  
22 technology on which controls are in effect under  
23 this section, the Secretary may—

24 (i) suspend favorable licensing treat-  
25 ment for such goods and technology to

1           such non-regime country or enduser in a  
2           non-regime country;

3           (ii) propose to the other members of  
4           the export control regime controlling the  
5           goods or technology the suspension of fa-  
6           vorable licensing treatment of the goods  
7           and technology to such non-regime country  
8           or enduser by all members of the regime;  
9           and

10          (iii) consider applying United States  
11          sanctions pursuant to section 8(d) to such  
12          non-regime country or enduser.

13          (d) EXPORT CONTROL REGIMES AND LICENSING  
14          POLICIES.—

15               (1) IN GENERAL.—For the purposes of creating  
16               effective multilateral export controls and strengthen-  
17               ing the controls imposed by export control regimes,  
18               the Secretary shall, with respect to each export con-  
19               trol regime, pursue negotiations with other members  
20               of such regime to accomplish the following objec-  
21               tives:

22                       (A) No license requirement for exports and  
23                       reexports among members of the regime and to  
24                       countries who are cooperating countries with re-  
25                       spect to the regime.

1           (B) Development of a common list of  
2 goods and technology to which export controls  
3 are applied, and a common list of countries and  
4 endusers to which exports are controlled, by  
5 members of the regime.

6           (C) Agreement on the same treatment, to  
7 be applied by all members of the regime, of ex-  
8 ports and reexports to members of the regime  
9 cooperating countries, and non-regime coun-  
10 tries, which could include multilateral review of  
11 exports to controlled countries and controlled  
12 endusers and multilateral sanctions to be ap-  
13 plied to such countries and endusers, or to  
14 members of the regime and cooperating coun-  
15 tries who violate export controls imposed by the  
16 regime.

17           (D) National procedures resulting in com-  
18 parable implementation and enforcement of ex-  
19 port controls among the members of the regime,  
20 including laws providing appropriate civil and  
21 criminal penalties and statutes of limitations  
22 sufficient to deter potential violations.

23           (E) Periodic meetings of high-level rep-  
24 resentatives of governments participating in the  
25 regime for the purpose of coordinating national



1 export control policies and issuing policy guid-  
2 ance for dissemination to exporters in partici-  
3 pating countries.

4 (F) Establishment of procedures for regul-  
5 lar consultation among members of the regime  
6 on proposed export license applications that in-  
7 cludes consultation with individuals with suffi-  
8 cient technical expertise to assess the licensing  
9 status of exports and to ensure the reliability of  
10 endusers.

11 (G) Development of common procedures  
12 for enforcing the export controls agreed upon  
13 by the regime, including adequate training and  
14 authority for enforcement officers to investigate  
15 and prevent illegal exports.

16 (H) Development of a common system of  
17 export control documentation to verify the  
18 movement of goods and technology.

19 (I) Establishment of procedures for the co-  
20 ordination and exchange of information con-  
21 cerning violations of controls agreed to by the  
22 regime.

23 (J) Establishment of procedures for the co-  
24 ordination and sharing of intelligence informa-

1           tion on controlled countries and controlled  
2           endusers.

3           (2) CERTIFICATION OF MULTILATERAL EXPORT  
4           CONTROL REGIMES.—

5                   (A) When the Secretary determines that  
6           an existing export control regime has met the  
7           objectives set forth in paragraph (1), the Sec-  
8           retary shall certify such determination and pub-  
9           lish such certification in the Federal Register,  
10          and exports to all countries adhering to that re-  
11          gime shall be subject to the licensing treatment  
12          set forth in paragraph (5).

13                  (B) COCOM shall be considered to have  
14          met the objectives set forth in paragraph (1).

15           (3) NEW EXPORT CONTROL REGIMES.—No new  
16          export control regime shall be entered into by the  
17          United States until the President has submitted to  
18          the appropriate committees in the House of Rep-  
19          resentatives and the Senate and published in the  
20          Federal Register, at least 90 days before the new re-  
21          gime becomes effective, a report—

22                   (A) certifying that the members of the new  
23          regime represent all significant sources of sup-  
24          ply for the goods and technology which are to  
25          be controlled by the regime;

1 (B) specifying the list of goods and tech-  
2 nology to be controlled cooperatively by mem-  
3 bers of the regime and the destinations to  
4 which such goods and technology are to be con-  
5 trolled; and

6 (C) certifying that such goods and tech-  
7 nology are controllable and that licensing their  
8 export would be effective in restricting the ca-  
9 pabilities set forth in subsection (a)(1)(A) or  
10 (B).

11 (4) FORMALIZATION OF REGIME CONTROLS.—

12 The Secretary shall pursue efforts to consolidate and  
13 formalize existing export control regimes, such as  
14 COCOM, the MTCR, the Australia Group, and the  
15 Nuclear Suppliers Group, into a single, new, multi-  
16 lateral entity for the coordination of export controls.  
17 Until such new entity is formed, the Secretary shall  
18 also pursue efforts to rationalize export controls  
19 among the existing export control regimes, especially  
20 with respect to coordinating the performance and  
21 other identifying characteristics of goods and tech-  
22 nologies which are controlled under such regimes.

23 (5) EXPORT LICENSING POLICIES TO COUN-  
24 TRIES PARTICIPATING IN OR COOPERATING WITH  
25 EXPORT CONTROL REGIMES.—

1 (A) FAVORABLE LICENSING TREAT-  
2 MENT.— Except as otherwise required by the  
3 Atomic Energy Act of 1954, if an export con-  
4 trol regime is certified under paragraph (2), no  
5 authority or permission may be required for ex-  
6 ports or reexports of goods and technology con-  
7 trolled by such regime to or from members of  
8 the regime or cooperating countries with respect  
9 to such regime.

10 (B) EXEMPTION FROM SANCTIONS.—Sanc-  
11 tions for violations of export controls may not  
12 be imposed under section 8(d) on foreign per-  
13 sons who are nationals of countries that are  
14 members of an export control regime certified  
15 under paragraph (2) or cooperating countries  
16 with respect to such regime, to the extent pro-  
17 vided in section 8(d)(5).

18 (C) EXCEPTION.—If the Secretary deter-  
19 mines that a member of an export control re-  
20 gime certified under paragraph (2), a cooperat-  
21 ing country with respect to such regime, or an  
22 enduser in a country that is such a regime  
23 member or in such a cooperating country is en-  
24 gaging in a pattern and practice of noncompli-  
25 ance with controls agreed to by the regime, the

1 Secretary shall seek a similar determination by  
2 the other members of the regime concerning  
3 such noncompliance. If such a determination is  
4 made, the Secretary shall propose the suspen-  
5 sion of favorable licensing treatment of exports  
6 and reexports to that noncomplying regime  
7 member, cooperating country, or enduser by all  
8 members of the regime during the period in  
9 which that determination is in effect.

10 (D) NEW MEMBERS.—When a country  
11 that is not a member of an export control re-  
12 gime certified under paragraph (2) agrees to  
13 the objectives and procedures of such regime  
14 and has become a member of that regime, the  
15 Secretary shall certify that this new member is  
16 eligible for the licensing treatment set forth in  
17 this paragraph, and shall publish such certifi-  
18 cation in the Federal Register.

19 (6) TRANSITION PERIOD TO CERTIFIED EXPORT  
20 CONTROL REGIMES.—For a period of 18 months be-  
21 ginning on the effective date of this Act, the Sec-  
22 retary shall apply the licensing policies set forth in  
23 paragraph (5) to all countries who participate in or  
24 are cooperating countries with respect to an export  
25 control regime even if the Secretary has not certified

1 the regime under paragraph (2). After the expiration  
2 of such 18-month period, if the Secretary fails to  
3 certify an export control regime under paragraph  
4 (2), the Secretary may—

5 (A) continue to apply the licensing policies  
6 set forth in paragraph (5) if the negotiations  
7 prescribed in paragraph (1) continue; or

8 (B) require authority or permission to ex-  
9 port or reexport goods or technology on which  
10 controls are in effect under this section to any  
11 country that participates in or is a cooperating  
12 country with respect to such export control re-  
13 gime.

14 **SEC. 5. EMERGENCY CONTROLS.**

15 (a) **AUTHORITY.**—

16 (1) **IN GENERAL.**—In order to carry out the  
17 policy set forth in section 2(b)(6), the President  
18 may, in accordance with this section, prohibit or cur-  
19 tail the export and reexport of any commercial goods  
20 or technology subject to the jurisdiction of the Unit-  
21 ed States to any country or enduser. The authority  
22 to impose controls under this subsection shall be ex-  
23 ercised by the Secretary, in consultation with other  
24 members of the Commercial Export Control Policy  
25 Committee established under section 6(b), and shall

1 be implemented by means of export licenses issued  
2 by the Secretary.

3 (2) EXPIRATION OF AUTHORITY.—

4 (A) IN GENERAL.—Any emergency controls  
5 imposed under this section shall expire 180  
6 days after they are imposed, unless they are  
7 terminated earlier by the President, or unless  
8 they are extended, adopted as national security  
9 controls under section 4, or included in a total  
10 embargo described in subsection (b)(2) that is  
11 imposed by the President under the Inter-  
12 national Emergency Economic Powers Act, the  
13 Trading with the Enemy Act or other provision  
14 of law other than this Act, on all exports and  
15 imports to a country. Any extension or subse-  
16 quent extension of the emergency controls shall  
17 be for a period of not more than 180 days each.

18 (B) EXCEPTION FOR MULTILATERAL  
19 AGREEMENTS.—Subparagraph (A) shall not  
20 apply to controls imposed by the President in  
21 order to fulfill obligations of the United States  
22 pursuant to a treaty to which the United States  
23 is a party or pursuant to an agreement to im-  
24 pose such controls multilaterally by the United  
25 Nations or similar international or regional or-

ganization of which the United States is a member. If such a treaty or agreement ceases to be in effect, emergency controls imposed by the President pursuant to such treaty or agreement shall immediately cease to be in effect.

(3) CRITERIA.—The President may impose emergency controls under this section only if the President—

(A) determines that the emergency controls are a necessary and appropriate policy response to an immediate and extraordinary threat to the national security or foreign policy of the United States;

(B) determines that no other alternative means can achieve the national security or foreign policy objectives of the United States within a reasonable time frame;

(C) determines that the emergency controls can reasonably be expected to achieve the intended objective within 180 days after being imposed, after having taken into consideration other factors, including the availability from one or more countries of comparable goods and technology to those on which the controls are imposed;



1 (D) determines that the United States has  
2 the ability to enforce all aspects of the proposed  
3 emergency controls effectively;

4 (E) determines that a period of time of not  
5 more than 180 days is necessary for the United  
6 States to obtain the agreement of other coun-  
7 tries to adopt such controls so that such con-  
8 trols may be imposed under section 4;

9 (F) commences, through the Secretary,  
10 within 10 days after the imposition of the emer-  
11 gency controls, negotiations with other coun-  
12 tries to adopt the emergency controls so that  
13 such controls may be imposed under section 4,  
14 unless such emergency controls are imposed  
15 under paragraph (2)(B); and

16 (G) consults with the Congress and sub-  
17 mits the necessary report under paragraph (4).

18 (4) REQUIRED CONSULTATIONS.—

19 (A) IN GENERAL.—The President may im-  
20 pose emergency controls under this section only  
21 after consultation with industry under subpara-  
22 graph (C), foreign countries under subpara-  
23 graph (D), and the Congress, including the  
24 Committee on Foreign Affairs of the House of

1 Representatives and the Committee on Bank-  
2 ing, Housing, and Urban Affairs of the Senate.

3 (B) LIMITATION.—The President may not  
4 impose emergency controls under this section  
5 until the President has submitted to the Con-  
6 gress and published in the Federal Register a  
7 report—

8 (i) specifying the purpose of the con-  
9 trols;

10 (ii) specifying the determinations of  
11 the President with respect to each of the  
12 criteria set forth in paragraph (3), the  
13 bases for such determinations, and the ad-  
14 verse national security, foreign policy, and  
15 economic consequences of the controls;

16 (iii) containing an analysis identifying  
17 those commercial goods and technology  
18 which must be controlled in order to  
19 achieve the intended purpose of the emer-  
20 gency controls, and describing the reasons  
21 for selecting such items;

22 (iv) describing the nature, subjects,  
23 and plans for the negotiations with other  
24 countries required by paragraph (3)(F);

1           (v) containing a thorough assessment  
2 of the foreign availability of the commer-  
3 cial goods and technology proposed for  
4 control;

5           (vi) containing an analysis, based on  
6 past experience with emergency controls  
7 and based upon information on foreign  
8 availability, of the extent to which the  
9 emergency controls will be effective in  
10 achieving the intended purpose;

11          (vii) incorporating an evaluation of  
12 the impact of the controls on the export  
13 performance of the United States, on the  
14 competitive position of the United States  
15 and United States industry in the inter-  
16 national economy, on the international rep-  
17 utation of the United States as a reliable  
18 supplier of goods and technology, on the  
19 economic well-being of individual United  
20 States companies and their employees and  
21 shareholders, their foreign investments,  
22 and their joint ventures, and on public  
23 health and safety;

24          (viii) specifying that the President has  
25 determined that the emergency controls

1 can be expected to achieve the intended  
2 purpose with reasonable certainty within  
3 180 days after being imposed;

4 (ix) indicating the nature and results  
5 of the alternative means attempted under  
6 paragraph (3)(B);

7 (x) describing the results of the con-  
8 sultations with industry required by sub-  
9 paragraph (C) and with other countries re-  
10 quired by subparagraph (D); and

11 (xi) describing the views of the Presi-  
12 dent regarding the likelihood that all other  
13 countries representing a source of supply  
14 of the goods or technology on which the  
15 controls are imposed will be willing to im-  
16 pose comparable controls promptly.

17 (C) CONSULTATION WITH INDUSTRY.—The  
18 Secretary shall consult with and seek advice  
19 from affected United States industries and the  
20 appropriate industry advisory committees estab-  
21 lished under section 6(d) before imposing emer-  
22 gency controls under this section. Such con-  
23 sultation and advice shall be with respect to the  
24 matters described in subparagraph (B), and

1           such other matters as the Secretary considers  
2           appropriate.

3           (D) CONSULTATION WITH OTHER COUN-  
4           TRIES.—Before imposing emergency controls  
5           under this section, the President shall consult  
6           with such other countries as the President con-  
7           siders appropriate with respect to the proposed  
8           controls, including other countries that rep-  
9           resent a significant source of supply of goods  
10          and technology proposed for the controls. Pur-  
11          suant to paragraph (3)(F), the President shall,  
12          within 10 days after imposing emergency con-  
13          trols, initiate negotiations with other supplier  
14          countries of goods and technology on which the  
15          controls are imposed, and other countries as the  
16          President considers appropriate, with respect to  
17          adopting the controls so that the controls may  
18          be imposed under section 4.

19          (E) CONFIDENTIALITY.—To the extent  
20          necessary to further the effectiveness of the  
21          emergency controls, portions of the report re-  
22          quired by subparagraph (B) may be submitted  
23          to the Congress on a classified basis, and shall  
24          be subject to the provisions of section 3(f), but  
25          a non-classified version of such report shall be

1 simultaneously made available to the public.  
2 Each such report shall, at the time it is submit-  
3 ted to the Congress, also be submitted to the  
4 Comptroller General, who shall assess the re-  
5 port's full compliance with the purposes of this  
6 subsection.

7 (5) EMERGENCY CONTROL LIST.—The Sec-  
8 retary shall establish and maintain, as part of the  
9 control index, a list comprised of any commercial  
10 goods and technology on which emergency controls  
11 are in effect under this section and, for each item  
12 on the list, the specific countries or endusers to  
13 which the controls apply. In addition to clearly iden-  
14 tifying which commercial goods or technology are  
15 subject to emergency controls to which specific coun-  
16 tries or endusers, the list shall also indicate when  
17 such controls are due to expire. Such list shall be re-  
18 viewed and updated every 6 months for the purpose  
19 of making such revisions as are necessary in order  
20 to carry out this section.

21 (b) PROCEDURES AND LIMITATIONS ON EMERGENCY  
22 CONTROLS.—

23 (1) IN GENERAL.—Not later than the end of  
24 the 180-day period after emergency controls are im-  
25 posed under subsection (a), the President shall—

1 (A) terminate the emergency controls;

2 (B) adopt the emergency controls as na-  
3 tional security controls under section 4;

4 (C) include the emergency controls in an  
5 embargo described in paragraph (2) on all ex-  
6 ports and imports that are imposed under the  
7 International Emergency Economic Powers Act,  
8 the Trading with the Enemy Act, or other pro-  
9 vision of law; or

10 (D) extend the emergency controls under  
11 subsection (c).

12 (2) IMPOSITION OF AN EMBARGO.—An embargo  
13 under paragraph (1)(C) shall include the prohibition  
14 of all exports to and imports from the country  
15 against which the controls under this section were  
16 imposed, except as provided in section 7(b)(6).

17 (3) CESSATION OF EMERGENCY CONTROLS.—

18 (A) IN GENERAL.— Emergency controls  
19 imposed under this section on goods or tech-  
20 nology shall cease to be in effect immediately  
21 upon—

22 (i) the imposition of national security  
23 controls under section 4 on the same goods  
24 and technology to the country or enduser

1 with respect to which the emergency con-  
2 trols were imposed; or

3 (ii) the imposition, under the Inter-  
4 national Emergency Economic Powers Act,  
5 the Trading with the Enemy Act, or other  
6 provision of law, of an embargo described  
7 in paragraph (2).

8 (B) CONVERSION TO MULTILATERAL  
9 AGREEMENTS.—If the President imposes emer-  
10 gency controls on goods or technology to a  
11 country or enduser under this section in order  
12 to fulfill obligations of the United States pursu-  
13 ant to a treaty to which the United States is a  
14 party, or pursuant to an agreement to impose  
15 such controls multilaterally by an international  
16 organization of which the United States is a  
17 member, any emergency controls imposed prior  
18 thereto under this section on the same goods or  
19 technology to the same country or enduser shall  
20 immediately cease to be in effect.

21 (4) LIMITATIONS ON REIMPOSITION.—Emer-  
22 gency controls which have ceased to be in effect  
23 under paragraph (3) or subsection (a)(2), and which  
24 have not been extended under subsection (c), may  
25 not be reimposed by the President under subsection



1 (a) for a period of 1 year beginning on the date on  
2 which the original controls expire.

3 (c) EXTENSION OF EMERGENCY CONTROLS.—

4 (1) REPORT.—If the President decides to ex-  
5 tend emergency controls imposed under subsection  
6 (a), which are due to expire under subsection (a)(2),  
7 the President shall, not later than 60 calendar days  
8 before the expiration of such controls, transmit to  
9 the Congress a report on the proposed extension,  
10 setting forth the reasons for the proposed extension  
11 in detail and specifying the period of time, which  
12 may not exceed 180 days, for which the controls are  
13 proposed to be extended. In particular, such report  
14 shall specify in detail—

15 (A) the determinations of the President  
16 with respect to each of the criteria set forth in  
17 subsection (a)(3);

18 (B) the reasons why negotiations required  
19 under subsection (a)(3)(F) failed to result in  
20 the adoption of the emergency controls under  
21 section 4, and the reasonable period of time the  
22 President expects will be required to success-  
23 fully conclude such negotiations;

24 (C) the reasons why a total embargo on all  
25 exports and imports is not presently justified to

1 achieve the national security or foreign policy  
2 objectives of the United States; and

3 (D) information on each of the items set  
4 forth in subsection (a)(4)(B).

5 (2) CONSIDERATION OF EXTENSION.—If the  
6 Congress, not later than 60 calendar days after the  
7 date of its receipt of the report under paragraph (1),  
8 adopts a joint resolution pursuant to paragraph (3)  
9 approving the extension of the emergency controls,  
10 then such emergency controls shall remain in effect  
11 for the period specified in the report or until termi-  
12 nated by the President, whichever occurs first, but  
13 in no case longer than 180 days after the date on  
14 which the controls would otherwise expire under sub-  
15 section (a)(2). If the Congress, within 60 calendar  
16 days after the date of its receipt of such report, fails  
17 to adopt a joint resolution approving the extension  
18 of such controls, then such controls shall cease to be  
19 effective upon the expiration of that 60-day period.

20 (3) JOINT RESOLUTIONS.—

21 (A) DEFINITION.—For purposes of this  
22 paragraph, the term “joint resolution” means  
23 only a joint resolution the matter after the re-  
24 solving clause of which is as follows: “That,  
25 pursuant to section 5(c) of the Commercial Ex-

1 port Administration Act of 1993, the President  
2 may extend emergency controls as specified in  
3 the report submitted to the Congress on  
4 \_\_\_\_\_.”, with the  
5 blank space being filled with the appropriate  
6 date.

7 (B) INTRODUCTION.—On the day on which  
8 a report is submitted to the House of Rep-  
9 resentatives and the Senate under paragraph  
10 (1), a joint resolution with respect to the exten-  
11 sion of controls specified in such report shall be  
12 introduced (by request) in the House of Rep-  
13 resentatives by the chairman of the Committee  
14 on Foreign Affairs, for the chairman and the  
15 ranking minority member of the Committee, or  
16 by Members of the House designated by the  
17 chairman and ranking minority member; and  
18 shall be introduced (by request) in the Senate  
19 by the majority leader of the Senate, for himself  
20 and the minority leader of the Senate, or by  
21 Members of the Senate designated by the ma-  
22 jority leader and the minority leader of the Sen-  
23 ate. If either House of Congress is not in ses-  
24 sion on the day on which such a report is sub-  
25 mitted, the joint resolution shall be introduced

1 in that House, as provided for in the preceding  
2 sentence, on the first day thereafter on which  
3 that House is in session.

4 (C) COMMITTEE REFERRALS.—All joint  
5 resolutions introduced in the House of Rep-  
6 resentatives shall be referred to the appropriate  
7 committee and all joint resolutions introduced  
8 in the Senate shall be referred to the Commit-  
9 tee on Banking, Housing, and Urban Affairs.

10 (D) DISCHARGE.—If the committee of ei-  
11 ther House to which a joint resolution has been  
12 referred has not reported the joint resolution by  
13 the end of 30 calendar days after its referral,  
14 the committee shall be discharged from further  
15 consideration of the joint resolution or of any  
16 other joint resolution introduced with respect to  
17 the same matter.

18 (E) CONSIDERATION.—A joint resolution  
19 under this paragraph shall be considered in the  
20 Senate in accordance with the provisions of sec-  
21 tion 601(b)(4) of the International Security As-  
22 sistance and Arms Export Control Act of 1976.  
23 For the purpose of expediting the consideration  
24 and passage of joint resolutions reported or dis-  
25 charged under this paragraph, it shall be in

1 order for the Committee on Rules of the House  
2 of Representatives to present for consideration  
3 a resolution of the House of Representatives  
4 providing procedures for the immediate consid-  
5 eration of a joint resolution under this para-  
6 graph which may be similar, if applicable, to  
7 the procedures set forth in section 601(b)(4) of  
8 the International Security Assistance and Arms  
9 Export Control Act of 1976.

10 (F) DUPLICATIVE RESOLUTIONS.—In the  
11 case of a joint resolution described in subpara-  
12 graph (A), if, before the passage by one House  
13 of a joint resolution of that House, that House  
14 receives a resolution with respect to the same  
15 matter from the other House, then—

16 (i) the procedure in that House shall  
17 be the same as if no joint resolution had  
18 been received from the other House; and

19 (ii) the vote on final passage shall be  
20 on the joint resolution of the other House.

21 (4) RENEWAL OF CONTROLS.—If, upon the  
22 expiration of the emergency controls extended  
23 under this subsection, the President determines  
24 that a further extension of emergency controls  
25 for an additional period of time of not more

1           than 180 calendar days is necessary, para-  
2           graphs (1) through (3) shall apply to such fur-  
3           ther extension.

4           “(d) EFFECT ON OTHER AUTHORITY.—

5           “(1) EMBARGO AUTHORITY.—Nothing in this  
6           section shall be construed to limit the authority of  
7           the President to impose an embargo on all exports  
8           to, and imports from, a specific country (except for  
9           exports of goods described in subparagraphs (A) and  
10          (B) of section 7(b)(6)) under the International  
11          Emergency Economic Powers Act, the Trading With  
12          the Enemy Act, or other provision of law. In any  
13          case in which the President exercises any such au-  
14          thority to impose an embargo, the requirements of  
15          this section shall not apply for so long as such em-  
16          bargo is in effect.

17          (2) EFFECT ON EXISTING EMBARGOES.—(A)  
18          Nothing in this section affects the authorities con-  
19          ferred upon the President by section 5(b) of the  
20          Trading With the Enemy Act, which were being ex-  
21          ercised with respect to a country on July 1, 1977,  
22          as a result of a national emergency declared by the  
23          President before that date, and are being exercised  
24          on the date of the enactment of this Act.

1           (B) Nothing in this section affects the authori-  
2       ties conferred upon the President by the Inter-  
3       national Emergency Economic Powers Act or other  
4       provision of law, which were being exercised with re-  
5       spect to a country before the date of the enactment  
6       of this Act as a result of a national emergency de-  
7       clared by the President before that date, and are  
8       being exercised with respect to such country on such  
9       date of enactment.

10 **SEC. 6. EXPORT CONTROL AUTHORITIES.**

11       (a) EXPORT CONTROL AUTHORITY AND FUNC-  
12       TIONS.—

13           (1) IN GENERAL.—Unless otherwise reserved to  
14       the President or a department or agency outside the  
15       Department of Commerce, all power, authority, and  
16       discretion conferred by this Act shall be exercised by  
17       the Secretary. The Secretary is responsible for all  
18       export control functions required by this Act, subject  
19       to subsection (d) of this section.

20           (2) DELEGATION.—The Secretary may delegate  
21       any export control function under this Act to the Di-  
22       rector of the Commercial Export Control Adminis-  
23       tration appointed under subsection (c), or to any  
24       other officer of the Department of Commerce.

1           (3) TRANSFER OF LICENSING AND REGU-  
2           LATORY FUNCTIONS.—In addition to the authorities  
3           and responsibilities otherwise provided for in this  
4           Act, there are hereby transferred to the Secretary  
5           the following functions.

6           (A) TRANSFERS FROM THE DEPARTMENT  
7           OF TREASURY.—There are hereby transferred  
8           to the Secretary all export control and licensing  
9           authorities and functions with respect to com-  
10          mercial goods and technology, and related serv-  
11          ices, exercised by the Office of Foreign Assets  
12          Control of the Department of the Treasury, be-  
13          fore the effective date of this Act, under—

14               (i) the International Emergency Eco-  
15               nomic Powers Act;

16               (ii) the Trading With the Enemy Act;

17               (iii) section 504 of the International  
18               Security Development and Cooperation Act  
19               of 1985 (22 U.S.C. 2349aa–8);

20               (iv) the United Nations Participation  
21               Act;

22               (v) the Comprehensive Anti-Apartheid  
23               Act of 1986; and

24               (vi) any other provision of law which  
25               authorizes the imposition by the United



1 States of embargoes or economic sanctions  
2 against foreign countries.

3 (B) TRANSFERS FROM THE NUCLEAR REG-  
4 ULATORY COMMISSION.—There are hereby  
5 transferred to the Secretary all export control  
6 and licensing authorities and functions to the  
7 extent such functions apply to commercial  
8 goods and technology of the Nuclear Regulatory  
9 Commission under—

10 (i) the Atomic Energy Act of 1954;

11 (ii) the Nuclear Non-Proliferation Act  
12 of 1978; and

13 (iii) the Energy Reorganization Act of  
14 1974.

15 (C) TRANSFERS FROM THE SECRETARY OF  
16 ENERGY.—There are hereby transferred to the  
17 Secretary all authorities and functions which  
18 are exercised by the Secretary of Energy, before  
19 the effective date of this Act, under—

20 (i) section 131 of the Atomic Energy  
21 Act of 1954, relating to the entry into sub-  
22 sequent arrangements; and

23 (ii) section 402(a) of the Nuclear  
24 Non-Proliferation Act of 1978, relating to

1 approval of enrichment after export of  
2 source material or special nuclear material.

3 (D) MISCELLANEOUS TRANSFERS.—There  
4 are hereby transferred to the Secretary such ex-  
5 port licensing and related regulatory functions  
6 and authorities not specifically or otherwise  
7 vested or delegated by statute, as the Secretary,  
8 in consultation with the Director of the Office  
9 of Management and Budget, determines to be  
10 appropriate.

11 (E) INCIDENTAL TRANSFERS.—The Direc-  
12 tor of the Office of Management and Budget, in  
13 consultation with the Secretary, shall make  
14 such determinations as may be necessary with  
15 regard to the transfer of functions under this  
16 Act, to make such additional incidental disposi-  
17 tions of assets, liabilities, contracts, property,  
18 records, and unexpended balances of appropria-  
19 tions, authorizations, allocations, and other  
20 funds held, used, arising from, available to, or  
21 to be made available in connection with the  
22 functions transferred by this Act, as the Direc-  
23 tor considers necessary to carry out this Act.

24 (F) EMPLOYEE TRANSFER PROVISIONS.—  
25 The Secretary, in consultation with the head of

1 any affected department or agency and the Di-  
2 rector of the Office of Management and Budg-  
3 et, is authorized to transfer to the Department  
4 of Commerce, or from the Department of Com-  
5 merce to another department or agency, any  
6 Federal employees employed to carry out the li-  
7 censing and regulatory functions required by  
8 this Act. The Secretary is authorized to exer-  
9 cise, with respect to such transferred Federal  
10 employees, all authority available to the head of  
11 the agency from which such Federal employees  
12 are transferred. Such authority shall include,  
13 but not be limited to, the authority to prescribe  
14 regulations incident to the exercise of such au-  
15 thority.

16 (4) PRESIDENTIAL DELEGATION OF AUTHOR-  
17 ITY.—With respect to those powers, authorities, or  
18 discretion reserved to the President by this Act, the  
19 President may not delegate or transfer such power,  
20 authority, or discretion to any official of any depart-  
21 ment or agency the head of which is not appointed  
22 by the President by and with the advice and consent  
23 of the Senate.

24 (5) EXCLUSIVE JURISDICTION OF THE SEC-  
25 RETARY OF ENERGY.—The Secretary of Energy

1 shall have exclusive jurisdiction with respect to the  
2 authorization under the first sentence of section 57b.  
3 of the Atomic Energy Act of 1954, of all activities  
4 constituting the direct or indirect engagement in the  
5 production of special nuclear material outside the  
6 United States. Nothing in this Act shall be con-  
7 strued to give the Secretary dual or concurrent juris-  
8 diction with the Secretary of Energy with respect to  
9 such activities, including the export or reexport of  
10 technology related to nuclear fuel cycle facilities or  
11 activities, or to expand the jurisdiction that the Sec-  
12 retary of Energy exercised under 57b. of the Atomic  
13 Energy Act of 1954 before the effective date of this  
14 Act.

15 (b) COMMERCIAL EXPORT CONTROL POLICY COM-  
16 MITTEE.—

17 (1) ESTABLISHMENT.—There is established a  
18 Commercial Export Control Policy Committee.

19 (2) FUNCTIONS.—The Committee shall—

20 (A) provide policy guidance and advice to  
21 the Secretary on commercial export control is-  
22 sues;

23 (B) review policy recommendations pro-  
24 posed by the Secretary and other members of  
25 the Committee; and

1 (C) receive policy recommendations from  
2 other agencies and resolve any policy disputes  
3 among departments and agencies under this  
4 Act.

5 (3) MEMBERSHIP.—The Committee shall be  
6 comprised of —

7 (A) the Secretary;

8 (B) the Secretary of Defense;

9 (C) the Secretary of Energy;

10 (D) the Secretary of State;

11 (E) the National Security Adviser;

12 (F) the National Economic Adviser; and

13 (G) the Director of the Commercial Export  
14 Control Administration.

15 (4) CHAIR.—The Committee shall be jointly  
16 chaired by the National Economic Adviser and the  
17 National Security Adviser.

18 (5) DELEGATION; OTHER REPRESENTATIVES.—  
19 A member of the Committee under paragraph (3)  
20 may designate the deputy head of his or her depart-  
21 ment or agency to serve in his or her absence as a  
22 member of the Committee, but this authority may  
23 not be delegated to any other individual. The Chairs  
24 may also invite the temporary participation in the  
25 Committee's meetings of representatives from other

1 offices and agencies as appropriate to the issues  
2 under consideration.

3 (6) MEETINGS.—The Secretary or either Chair  
4 of the Committee may call a meeting of the Commit-  
5 tee. Meetings shall not be subject to section 552b of  
6 title 5, United States Code.

7 (c) THE COMMERCIAL EXPORT CONTROL ADMINIS-  
8 TRATION.—

9 (1) ESTABLISHMENT.—There is established in  
10 the Department of Commerce the Commercial Ex-  
11 port Control Administration. CECA shall be the  
12 agency responsible for the implementation of export  
13 controls imposed under this Act.

14 (2) PRINCIPAL OFFICERS.—

15 (A) DIRECTOR.—There shall be at the  
16 head of CECA a Director, who shall be ap-  
17 pointed by the President, by and with the ad-  
18 vice and consent of the Senate. The Director,  
19 under the supervision and direction of the Sec-  
20 retary, shall perform such administrative and  
21 executive functions as the Secretary shall dele-  
22 gate, including—

23 (i) the formulation of United States  
24 export control and technology transfer poli-

1           cies with respect to commercial goods and  
2           technology;

3           (ii) the implementation of export con-  
4           trol policies through the administration of  
5           licenses for exports and reexports of com-  
6           mercial goods and technology, and the en-  
7           forcement of export controls, to the extent  
8           provided in this Act;

9           (iii) the establishment of the control  
10          index, and the development of proposals  
11          for revisions of export control lists of ex-  
12          port control regimes;

13          (iv) the conduct of bilateral and multi-  
14          lateral negotiations relating to export con-  
15          trols of export control regimes and emer-  
16          gency controls under section 5;

17          (v) the distribution of duties among  
18          the personnel, administrative units, and of-  
19          fices of CECA; and

20          (vi) such other matters as the Sec-  
21          retary may specify.

22          (B) DEPUTY DIRECTOR.—The Director  
23          shall be assisted by a Deputy Director, who  
24          shall be appointed by the President, by and  
25          with the advice and consent of the Senate. The

1 Deputy Director shall supervise and coordinate  
2 the operations of CECA.

3 (C) ASSISTANT DIRECTOR FOR EXPORT  
4 CONTROL.—The Assistant Director for Export  
5 Control of CECA shall assist the Director and  
6 shall carry out CECA's responsibilities with re-  
7 spect to—

8 (i) processing export license applica-  
9 tions;

10 (ii) emergency control policies;

11 (iii) the review and revision of the  
12 control index;

13 (iv) foreign availability determinations  
14 under section 3(g);

15 (v) requests by exporters for the clas-  
16 sification of commodities on the control  
17 index;

18 (vi) coordinating the activities of the  
19 industry advisory committees appointed  
20 under subsection (d);

21 (vii) export control functions and re-  
22 sponsibilities transferred under subsection  
23 (a)(3); and

24 (viii) such other matters as the Direc-  
25 tor may specify.



1 (D) ASSISTANT DIRECTOR FOR NON-  
2 PROLIFERATION.—The Assistant Director for  
3 Nonproliferation of CECA shall carry out  
4 CECA's responsibilities with respect to policy  
5 development on—

6 (i) export and reexport controls under  
7 the MTCR;

8 (ii) chemical and biological weapons  
9 export and reexport controls imposed pur-  
10 suant to the agreement of the Australia  
11 Group;

12 (iii) export and reexport controls on  
13 goods and technology imposed pursuant to  
14 section 309(c) of the Nuclear Non-Pro-  
15 liferation Act of 1978, and proliferation is-  
16 sues of the Nuclear Suppliers Group;

17 (iv) the designation of controlled  
18 countries and controlled endusers for pur-  
19 poses of restricting the capabilities de-  
20 scribed in section 4(a)(1)(B); and

21 (v) such other matters as the Director  
22 may specify.

23 (E) ASSISTANT DIRECTOR FOR SECURITY  
24 AND INTELLIGENCE.—The Assistant Director  
25 for Security and Intelligence of CECA shall

1 carry out CECA's responsibilities with respect  
2 to—

3 (i) coordination and liaison with the  
4 Department of Defense, the Armed Forces  
5 of the United States, and the intelligence  
6 community;

7 (ii) development and maintenance of  
8 information on enduser reliability, includ-  
9 ing conducting outside the United States  
10 prelicense investigations and post-shipment  
11 verifications of items licensed for export;  
12 and

13 (iii) such other matters as the Direc-  
14 tor may specify.

15 (F) ASSISTANT DIRECTOR FOR ENFORCE-  
16 MENT AND COMPLIANCE.—The Assistant Direc-  
17 tor for Enforcement and Compliance of CECA  
18 shall carry out CECA's responsibilities with re-  
19 spect to—

20 (i) the enforcement and compliance  
21 duties of CECA, as provided in subsection  
22 (e); and

23 (ii) coordination with the Commis-  
24 sioner of Customs in the enforcement of  
25 this Act.

1           (G) CHIEF NEGOTIATOR.—The Chief Ne-  
2           gotiator of CECA shall hold the rank of ambas-  
3           sador, and shall be responsible for the develop-  
4           ment, coordination, and conduct of all negotia-  
5           tions regarding export control regimes, includ-  
6           ing negotiations related to COCOM, the Aus-  
7           tralia Group, the Nuclear Suppliers Group, and  
8           the MTCR, negotiations described in section  
9           4(c)(2)(D), and negotiations required under  
10          section 5 regarding emergency controls.

11          (H) APPOINTMENTS.—The officers de-  
12          scribed in subparagraphs (C), (D), (E), (F),  
13          and (G) shall each be appointed by the Presi-  
14          dent, by and with the advice and consent of the  
15          Senate.

16          (d) INDUSTRY ADVISORY COMMITTEES.—

17               (1) TECHNICAL ADVICE AND SUPPORT.—

18               (A) IN GENERAL.—Upon written request  
19               by representatives of a substantial segment of  
20               any industry that produces goods or technology  
21               subject to export controls under this Act, the  
22               Secretary shall appoint an industry advisory  
23               committee for any such goods or technology  
24               that the Secretary determines are difficult to  
25               evaluate because of questions concerning tech-

1 nical matters, worldwide availability and actual  
2 utilization of goods and technology, or licensing  
3 procedures.

4 (B) COMPOSITION.—Each such committee  
5 shall consist of representatives of United States  
6 industry and the United States Government. No  
7 person serving on any such committee who is a  
8 representative of industry shall serve on such  
9 committee for more than 4 consecutive years.

10 (C) CONSULTATION.—The Secretary and  
11 the Committee shall consult with appropriate  
12 industry advisory committees with respect to  
13 questions involving—

14 (i) technical matters, including licens-  
15 ing procedures;

16 (ii) worldwide availability and utiliza-  
17 tion of controlled goods and technology;

18 (iii) revisions of the control index, in-  
19 cluding proposed revisions of export control  
20 regime agreements;

21 (iv) the issuance of regulations;

22 (v) gathering of information from in-  
23 dustry on illegal sales and diversion of  
24 technology in furtherance of the enforce-  
25 ment of this Act; and

1 (vi) any other questions that the Sec-  
2 retary considers appropriate.

3 Members of the public shall be given a reason-  
4 able opportunity, under regulations prescribed  
5 by the Secretary, to present evidence to any in-  
6 dustry advisory committee.

7 (D) MULTILATERAL NEGOTIATIONS.—The  
8 Secretary may include industry representatives  
9 from appropriate industry advisory committees  
10 in the United States delegations to export con-  
11 trol regime negotiations.

12 (E) EXPENSES.—Upon the request of any  
13 member of an industry advisory committee, the  
14 Secretary may reimburse such member for trav-  
15 el, subsistence, and other necessary expenses in-  
16 curred by such member in connection with the  
17 duties of such member on such committee.

18 (F) CHAIRPERSON; MEETINGS.—Each in-  
19 dustry advisory committee shall elect a chair-  
20 person (who may not be an officer or employee  
21 of the United States Government), and shall  
22 meet at least every 3 months at the call of the  
23 chairperson unless the chairperson determines,  
24 in consultation with the other members of the

1 committee, that such a meeting is not necessary  
2 to achieve the purposes of this subsection.

3 (G) DURATION.—Each industry advisory  
4 committee shall be terminated after a period of  
5 2 years, unless extended by the Secretary for  
6 one additional 2-year period.

7 (H) AGENCY DISCLOSURES.—The Sec-  
8 retary, in conjunction with other departments  
9 and agencies participating in the administration  
10 of this Act, shall disclose to each industry advi-  
11 sory committee adequate information, consist-  
12 ent with national security, necessary for such  
13 committee to discharge its duties.

14 (I) CERTIFICATION OF FOREIGN AVAIL-  
15 ABILITY.—If an industry advisory committee  
16 certifies to the Secretary that any of the goods  
17 or technology with respect to which such com-  
18 mittee was appointed meet the foreign availabil-  
19 ity requirements of section 3(g), the Secretary  
20 shall refer the matter to the International  
21 Trade Commission which shall make a foreign  
22 availability assessment of such goods or tech-  
23 nology under such section and shall submit a  
24 report on such foreign availability to the indus-  
25 try advisory committee and the Secretary.

1           (2) POLICY ADVICE.—The Secretary shall ap-  
2       point a group of knowledgeable individuals from  
3       businesses affected by export controls to provide ad-  
4       vice to the Secretary and the Committee on export  
5       control policy issues. The chairperson of such group  
6       may not be a member of the Committee, but shall  
7       represent industry advisory committees regarding re-  
8       view of control lists and export control regime pro-  
9       posals.

10       (e) ENFORCEMENT AUTHORITY.—

11           (1) GENERAL AUTHORITIES SHARED BY COM-  
12       MERCE AND CUSTOMS.—To the extent necessary or  
13       appropriate to the enforcement of this Act or to the  
14       imposition of any penalty, forfeiture, or liability aris-  
15       ing under this Act, the Secretary and the Commis-  
16       sioner of Customs (and officers or employees specifi-  
17       cally designated by either the Secretary or the Com-  
18       missioner) may—

19           (A) require reports or the keeping of  
20       records by any person;

21           (B) take the sworn testimony of any per-  
22       son;

23           (C) administer oaths or affirmations; and

24           (D) by subpoena, require any person to ap-  
25       pear and testify or to appear and produce

1 books, records, and other writings, or both, and  
2 to inspect the books, records and other writings,  
3 premises, or property of any person.

4 In the case of contumacy by, or refusal to obey a  
5 subpoena issued to any person under this paragraph,  
6 a district court of the United States, after notice to  
7 any such person and a hearing, shall have jurisdic-  
8 tion to issue an order requiring such person to ap-  
9 pear and give testimony or to appear and produce  
10 books, records, and other writings, or both, and any  
11 failure to obey such order of the court may be pun-  
12 ished by such court as a contempt thereof.

13 (2) ENFORCEMENT AUTHORITY OF THE DE-  
14 PARTMENT OF COMMERCE.—

15 (A) IN GENERAL.—Subject to subpara-  
16 graph (B), the Secretary shall have the respon-  
17 sibility for investigations conducted within the  
18 United States in the enforcement of this Act. In  
19 the enforcement of this Act, the Secretary is  
20 authorized to search, detain (after search), and  
21 seize goods or technology at those places within  
22 the United States other than those ports speci-  
23 fied in paragraph (3)(A). The search, detention  
24 (after search), or seizure of goods and tech-  
25 nology at those ports and places specified in



1 paragraph (3)(A) may be conducted by employ-  
2 ees of the Department of Commerce designated  
3 by the Secretary with the concurrence of the  
4 Commissioner of Customs or a person des-  
5 ignated by the Commissioner.

6 (B) OTHER AUTHORIZED ACTIONS.—The  
7 Secretary may designate employees under the  
8 direction of the Assistant Director for Enforce-  
9 ment and Compliance of CECA, in carrying out  
10 enforcement authority under this Act, to—

11 (i) execute any warrant or other proc-  
12 ess issued by a court or officer with com-  
13 petent jurisdiction with respect to the en-  
14 forcement of this Act;

15 (ii) make arrests without warrant for  
16 any violation of this Act committed in his  
17 or her presence or view, or if the officer or  
18 employee has probable cause to believe that  
19 the person to be arrested has committed or  
20 is committing such a violation of this Act;  
21 and

22 (iii) carry firearms in carrying out  
23 any activity described in clause (i) or (ii).

24 (3) ENFORCEMENT AUTHORITY OF THE COM-  
25 MISSIONER OF CUSTOMS.—

1 (A) IN GENERAL.—Subject to subpara-  
2 graph (B), the United States Customs Service  
3 is authorized, in the enforcement of this Act, to  
4 make investigations outside of the United  
5 States, and to search, detain (after search), and  
6 seize goods or technology at those ports of  
7 entry to or exit from the United States where  
8 officers of the Customs Service are authorized  
9 by law to conduct such searches, detentions,  
10 and seizures, and at those places outside the  
11 United States where the Customs Service, pur-  
12 suant to agreements or other arrangements  
13 with other countries, is authorized to perform  
14 enforcement activities.

15 (B) OTHER AUTHORIZED ACTIONS.—An  
16 officer of the United States Customs Service, in  
17 carrying out enforcement authority under this  
18 Act, may—

19 (i) stop, search, and examine a vehi-  
20 cle, vessel, aircraft, or person on which or  
21 whom such officer has reasonable cause to  
22 suspect there are any goods or technology  
23 that has been, is being, or is about to be  
24 exported from the United States in viola-  
25 tion of this Act;

1           (ii) search any package or container  
2           in which such officer has reasonable cause  
3           to suspect there are any goods or tech-  
4           nology that has been, is being, or is about  
5           to be exported from the United States in  
6           violation of this Act;

7           (iii) detain (after search) or seize and  
8           secure for trial any goods or technology on  
9           or about such vehicle, vessel, aircraft, or  
10          person, or in such package or container, if  
11          such officer has probable cause to believe  
12          the goods or technology has been, is being,  
13          or is about to be exported from the United  
14          States in violation of this Act; and

15          (iv) make arrests without warrant for  
16          any violation of this Act committed in the  
17          officer's presence or view or if the officer  
18          has probable cause to believe that the per-  
19          son to be arrested has committed or is  
20          committing such a violation.

21          The arrest authority conferred by clause (iv) is in  
22          addition to any arrest authority provided under  
23          other laws.

24               (4) OTHER ENFORCEMENT PROVISIONS.—

1           (A) REFERRAL OF CASES.—All cases in-  
2           volving violations of this Act shall be referred to  
3           the Secretary for purposes of determining civil  
4           penalties and administrative sanctions under  
5           section 8, or to the Attorney General for crimi-  
6           nal action in accordance with this Act.

7           (B) PUBLICATION OF PROCEDURES.—The  
8           Secretary, with the concurrence of the Sec-  
9           retary of the Treasury, shall publish in the Fed-  
10          eral Register procedures setting forth, in ac-  
11          cordance with this subsection, the responsibil-  
12          ities of the Department of Commerce and the  
13          United States Customs Service in the enforce-  
14          ment of this Act.

15          (C) INFORMATION SHARING.—The Sec-  
16          retary, with the concurrence of the Secretary of  
17          the Treasury, may publish procedures for the  
18          sharing of information in accordance with sec-  
19          tion 3(g), and procedures for the submission to  
20          the appropriate departments and agencies by  
21          private persons of information relating to the  
22          enforcement of this Act.

23          (D) REFERENCES.—For purposes of this  
24          section, a reference to the enforcement of this  
25          Act or to a violation of this Act includes a ref-

1           erence to the enforcement or a violation of any  
2           regulation, order, or license issued under this  
3           Act.

4           (5) IMMUNITY.—No person shall be excused  
5           from complying with any requirements under this  
6           section because of an assertion of a privilege against  
7           self-incrimination, but the immunity provisions of  
8           section 6002 of title 18, United States Code, shall  
9           apply with respect to any individual who specifically  
10          claims such privilege.

11 **SEC. 7. COMMERCIAL EXPORT LICENSES AND PROCESSING**  
12 **PROCEDURES.**

13          (a) RESPONSIBILITY OF THE SECRETARY.—

14           (1) IN GENERAL.—The Secretary is responsible  
15           for all export licensing functions required by this  
16           Act. All determinations with respect to any export li-  
17           cense application shall be made by the Secretary,  
18           subject to the procedures provided in this section.

19           (2) REFERRAL TO OTHER DEPARTMENTS OR  
20           AGENCIES.—The Secretary may seek information  
21           and recommendations from any other department or  
22           agency of the United States on export license appli-  
23           cations, in accordance with the procedures provided  
24           in subsection (c)(2). A department or agency review-  
25           ing an export license application referred by the Sec-

1       retary shall cooperate fully in providing such infor-  
2       mation or recommendations. The recommendations  
3       made by other departments or agencies shall not be  
4       binding on the Secretary in making determinations  
5       on export license applications under this section.

6       (b) COMMERCIAL EXPORT LICENSES.—

7           (1) TYPES OF COMMERCIAL EXPORT LI-  
8       CENSES.—Under such conditions as the Secretary  
9       may impose, consistent with the provisions of this  
10      Act, the Secretary may require the following types of  
11      licenses for exports and reexports of commercial  
12      goods and technology controlled under this Act:

13           (A) SPECIFIC EXPORTS AND REEX-  
14      PORTS.—An individual validated license, au-  
15      thorizing a specific export or reexport.

16           (B) MULTIPLE EXPORTS AND REEX-  
17      PORTS.—Validated licenses authorizing multiple  
18      exports or reexports, in lieu of an individual  
19      validated license for each such export or reex-  
20      port.

21           (C) TERMS AND CONDITIONS.—(i) The  
22      Secretary shall grant a license under this para-  
23      graph on the basis of approval of the appli-  
24      cant's systems of control for the commercial  
25      goods and technology to be exported. The Sec-

1           retary and, at the request of the Secretary, the  
2           Commissioner of Customs, shall perform peri-  
3           odic reviews of license applicants and their com-  
4           pliance with the terms of licenses issued under  
5           this Act. In the case of a license issued under  
6           subparagraph (B), the Secretary shall perform  
7           periodic audits of license holders in order to as-  
8           sure the integrity and effectiveness of the li-  
9           censing procedures under this section that  
10          apply to such licenses.

11                 (ii) Requirements for the redesign,  
12           reengineering, or substantial modification of  
13           standard product models or configurations, and  
14           similar requirements shall not be imposed under  
15           this Act before any export license application is  
16           approved for the export or reexport of commer-  
17           cial goods or technology to which export or re-  
18           export controls imposed pursuant to an export  
19           control regime apply if such goods or tech-  
20           nology are intended for civil end uses, unless  
21           such export control regime agrees to such re-  
22           quirements.

23                 (2) AUTHORIZATION FOR TECHNICAL DATA.—A  
24           validated license authorizing the export or reexport  
25           of any commercial goods or technology under this

1 Act shall also authorize the export or reexport of op-  
2 eration technical data related to such goods or tech-  
3 nology, whether or not such data is specifically ref-  
4 erenced in the license or license application, if the  
5 technical level of the data does not exceed the level  
6 reasonably necessary to install, repair, maintain, in-  
7 spect, operate, or use the goods or technology.

8 (3) REPLACEMENT PARTS.—The Secretary  
9 shall not require an individual validated license for  
10 replacement parts that are exported or reexported to  
11 replace on a one-for-one basis parts that were in a  
12 good that has been lawfully exported from the Unit-  
13 ed States.

14 (4) INCORPORATED GOODS OR TECHNOLOGY.—

15 (A) GOODS CONTAINING CONTROLLED  
16 PARTS AND COMPONENTS.—No license may be  
17 required under this Act to export a commercial  
18 good solely because the good contains parts or  
19 components the export of which is controlled  
20 under this Act if such parts or components—

21 (i) are essential to the functioning of  
22 the good;

23 (ii) are customarily included in sales  
24 of the good in countries other than con-  
25 trolled countries; and



1 (iii) comprise 25 percent or less of the  
2 total value of the good.

3 (B) REEXPORTS.—Except as provided in  
4 subparagraph (C), no authority or permission  
5 may be required under this Act to reexport,  
6 from any country that is not a member of, or  
7 a cooperating country with respect to, an export  
8 control regime certified under section 4(d)(2),  
9 of any commercial good or technology the ex-  
10 port of which is controlled under section 4 when  
11 the good or technology to be reexported is in-  
12 corporated in another good or technology in  
13 that country, and—

14 (i) the value of the commercial good  
15 or technology the export of which is con-  
16 trolled under this Act is 25 percent or less  
17 of the total value of the good or technology  
18 into which it is incorporated; or

19 (ii) the export of such commercial  
20 good or technology from the United States  
21 to the destination or enduser of the pro-  
22 posed reexport would require only notifica-  
23 tion to the participating governments of  
24 the appropriate export control regime.

1 (C) EMERGENCY CONTROLS.—No author-  
2 ity or permission may be required to reexport  
3 from any country a commercial good or tech-  
4 nology the export of which is controlled under  
5 section 5 when the good or technology to be re-  
6 exported is incorporated in another good or  
7 technology in that country and the value of the  
8 good or technology controlled under section 5 is  
9 10 percent or less of the total value of the good  
10 or technology into which it is incorporated.

11 (5) EXISTING CONTRACTS AND LICENSES.—

12 (A) IN GENERAL.—The President may not,  
13 under this Act, prohibit the export or reexport  
14 of commercial goods or technology—

15 (i) in performance of a contract,  
16 agreement, or other contractual commit-  
17 ment entered into before the effective date  
18 of export or reexport controls imposed  
19 under this Act on such goods or tech-  
20 nology, or the date on which the President  
21 reports to the Congress under section  
22 (5)(a)(4)(B) the President's intention to  
23 impose emergency controls on the export  
24 or reexport of such goods or technology, or

1 (ii) under a validated license or other  
2 authorization issued under this Act.

3 (B) EXCEPTION.—The prohibition in sub-  
4 paragraph (A) shall not apply if the President  
5 determines and certifies to the Congress that—

6 (i) a breach of the peace poses a seri-  
7 ous and direct threat to the strategic inter-  
8 ests of the United States;

9 (ii) the prohibition or curtailment of  
10 exports or reexports (as the case may be)  
11 under each such contract, agreement, com-  
12 mitment, license, or authorization will be  
13 directly instrumental in remedying the sit-  
14 uation posing the direct threat; and

15 (iii) such prohibition or curtailment  
16 will continue only as long as the direct  
17 threat persists.

18 (6) EXCLUSION FOR MEDICINE AND MEDICAL  
19 SUPPLIES AND FOR DONATIONS.—This Act does not  
20 authorize controls on—

21 (A) medicine or medical supplies; or

22 (B) donations of goods (including, but not  
23 limited to, food, educational materials, seeds  
24 and hand tools, medicines and medical supplies,  
25 water resources equipment, clothing and shelter

1 materials, and basic household supplies) that  
2 are intended to meet basic human needs.

3 (7) PROHIBITION OF FEES FOR PROCESSING  
4 EXPORT LICENSE APPLICATIONS.—No fee may be  
5 charged in connection with the submission or proc-  
6 essing of an export license application under this  
7 Act.

8 (c) PROCEDURES FOR PROCESSING EXPORT LI-  
9 CENSE APPLICATIONS.—

10 (1) INITIAL SCREENING.—All export license ap-  
11 plications required under this Act shall be submitted  
12 by the applicant to the Secretary. Not more than 10  
13 days after the date on which any export license ap-  
14 plication is submitted to the Secretary, the Secretary  
15 shall—

16 (A) send the applicant an acknowledgment  
17 of the receipt of the application and the date of  
18 the receipt;

19 (B) submit to the applicant a written de-  
20 scription of the procedures required by this sec-  
21 tion, the responsibilities of the Secretary with  
22 respect to the application, and the rights of the  
23 applicant;

24 (C) return the application without action if  
25 the application is improperly completed or if ad-

1           ditional information is required, with sufficient  
2           information to permit the application to be  
3           properly resubmitted, in which case, if such ap-  
4           plication is resubmitted, it shall be treated as a  
5           new application for the purpose of calculating  
6           the time periods prescribed in this subsection;  
7           and

8           (D) determine whether it is necessary to  
9           submit the application to a multilateral review  
10          process pursuant to an export control regime  
11          and, if so, inform the applicant of such require-  
12          ment.

13          (2) REFERRAL.—If the Secretary decides to  
14          refer an export license application to any other de-  
15          partment or agency for a recommendation under  
16          subsection (a)(2), the Secretary shall, within 5 days  
17          after receiving the application, refer the application  
18          concurrently to all such departments or agencies. A  
19          department or agency reviewing an export license  
20          application referred by the Secretary shall have 15  
21          days in which to submit to the Secretary its rec-  
22          ommendations on the application. Any department  
23          or agency which does not submit its recommenda-  
24          tions within that 15-day period shall be deemed by

1 the Secretary to have no objection to the approval of  
2 such application.

3 (3) ACTION BY THE SECRETARY.—Subject to  
4 paragraph (6), 30 days after the date of formal fil-  
5 ing with the Secretary of an export license applica-  
6 tion, a license for the transaction specified in the ap-  
7 plication shall become valid and effective and the  
8 goods or technology involved are authorized for ex-  
9 port or reexport pursuant to such license, unless—

10 (A) the application has been otherwise ap-  
11 proved by the Secretary, in which case it shall  
12 be valid and effective according to the terms of  
13 the approval;

14 (B) the application has been denied by the  
15 Secretary under this section and the applicant  
16 has been so informed; or

17 (C) the Secretary requires additional time,  
18 not to exceed 30 days, for matters related to  
19 the consideration of the export license applica-  
20 tion, including, but not limited to, performing  
21 pre-license investigations and obtaining govern-  
22 ment-to-government assurances with respect to  
23 reexports or other matters, and so informs the  
24 applicant.

1 In a case in which subparagraph (C) applies, at the  
2 end of the 30-day period described in such subpara-  
3 graph, the license for the transaction specified in the  
4 application shall become valid and effective and the  
5 goods and technology are authorized for export or  
6 reexport pursuant to such license, unless subpara-  
7 graph (A) or (B) applies during such 30-day period.

8 (4) ACTION UPON DENIAL.—In cases in which  
9 the Secretary has determined that a license applica-  
10 tion should be denied, the applicant shall be in-  
11 formed in writing, not later than 5 days after such  
12 determination is made, of—

13 (A) the determination;

14 (B) the statutory basis for the proposed  
15 denial;

16 (C) the reasons for such denial, with ref-  
17 erences to the criteria set forth in sections 4  
18 and 5;

19 (D) what, if any, modifications in, or re-  
20 strictions on, the goods or technology for which  
21 the license was sought would allow the export  
22 or reexport of the goods or technology to be  
23 compatible with controls imposed under this  
24 Act;

1           (E) which officers and employees of the  
2           Department of Commerce who are familiar with  
3           the application will be made reasonably avail-  
4           able to the applicant for considerations with re-  
5           gard to such modifications or restrictions, if ap-  
6           propriate;

7           (F) to the extent consistent with the na-  
8           tional security and foreign policy of the United  
9           States, the specific considerations which led to  
10          the determination to deny the application; and

11          (G) the availability of appeal procedures.

12          The Secretary shall allow the applicant not less than  
13          30 days to respond to the Secretary's determination  
14          before the license application is denied. If any deci-  
15          sion on a license application is deferred inconsistent  
16          with the provisions of this subsection, the applicant  
17          shall be so informed in writing not more than 5 days  
18          after such deferral.

19          (5) RECORDKEEPING.—The Secretary shall  
20          make and keep records of all advice and rec-  
21          ommendations given by Federal departments and  
22          agencies, and decisions made by the Department of  
23          Commerce, in connection with any export license ap-  
24          plication or revision of an export license application



1 under this Act, including the factual and analytical  
2 basis of the advice, recommendations, or decisions.

3 (6) MULTILATERAL CONTROLS.—

4 (A) NOTICE OF MULTILATERAL REVIEW.—

5 In any case in which an export license applica-  
6 tion that has been finally approved is required  
7 to be submitted to a multilateral review process  
8 pursuant to an export control regime, the li-  
9 cense shall not be issued under paragraph (3),  
10 but the Secretary shall notify the applicant of  
11 the approval of the application (and the date of  
12 such approval) by the Secretary subject to such  
13 multilateral review. The license shall be issued  
14 upon approval of the application under such  
15 multilateral review.

16 (B) ISSUANCE OF LICENSE AFTER 30

17 DAYS.—If such multilateral review has not re-  
18 sulted in a determination with respect to the  
19 application within 30 days after the application  
20 is approved, the Secretary's approval of the li-  
21 cense shall be final and the license shall be is-  
22 sued, unless a longer review period is specifi-  
23 cally required by the established procedures of  
24 the applicable export control regime.

1           (7) CHANGES IN REQUIREMENTS FOR APPLICA-  
2           TIONS.—Except as provided in paragraph (1)(C), in  
3           any case in which, after an export license application  
4           is submitted, the Secretary changes the require-  
5           ments for such a license application, the Secretary  
6           may request appropriate additional information of  
7           the applicant, but the Secretary may not return the  
8           application to the applicant without action because it  
9           fails to meet the changed requirements.

10          (d) APPEAL AND COURT ACTIONS.—

11           (1) IN GENERAL.—The Secretary shall establish  
12           appropriate procedures for any applicant to appeal  
13           to the Secretary the denial of an export license ap-  
14           plication under this Act.

15           (2) PUBLICATION AND INDEXING OF APPEAL  
16           DECISIONS.—The Secretary shall, to the greatest ex-  
17           tent practicable, taking into account restrictions on  
18           the disclosure of classified or confidential informa-  
19           tion, publish in the Federal Register and index deci-  
20           sions on appeals of license denials under paragraph  
21           (1).

22           (3) TIME DELAY.—In any case in which any ac-  
23           tion prescribed in this section is not taken on an ex-  
24           port license application within the time periods es-  
25           tablished by subsection (c) (except in the case of a

1 time period extended under subsection (c)(3)(C) of  
2 which the applicant is notified), the applicant may  
3 file a petition with the Secretary requesting compli-  
4 ance with the requirements of subsection (c). When  
5 such petition is filed, the Secretary shall take imme-  
6 diate steps to correct the situation giving rise to the  
7 petition and shall immediately notify the applicant of  
8 such steps.

9 (4) ACTION ON PETITIONS.—If, within 20 days  
10 after a petition is filed under paragraph (3), the  
11 processing of the application has not been brought  
12 into conformity with the requirements of subsection  
13 (c), or the application has been brought into con-  
14 formity with such requirements but the Secretary  
15 has not so notified the applicant, the applicant may  
16 bring an action in an appropriate United States dis-  
17 trict court for a restraining order, a temporary or  
18 permanent injunction, or other appropriate relief, to  
19 require compliance with the requirements of sub-  
20 section (c). The United States district courts shall  
21 have jurisdiction to provide such relief, as appro-  
22 priate.

23 (5) FINAL ORDERS; APPEAL.—The determina-  
24 tion of the Secretary on appeals under this sub-

1 section shall be final and may be appealed in accord-  
2 ance with section 8(c).

3 (e) OTHER INQUIRIES.—

4 (1) CLASSIFICATION REQUESTS.—In any case  
5 in which the Secretary receives a written request  
6 asking for the proper classification of a good or  
7 technology on the control index, the Secretary shall,  
8 not more than 10 working days after receiving the  
9 request, inform the person making the request of the  
10 proper classification.

11 (2) APPLICABILITY OF REQUIREMENT.—In any  
12 case in which the Secretary receives a written re-  
13 quest for information about the applicability of ex-  
14 port license requirements under this Act to a pro-  
15 posed transaction or series of transactions, the Sec-  
16 retary shall, not more than 30 days after receiving  
17 the request, reply with that information to the per-  
18 son making the request.

19 (3) PUBLICATION OF CLASSIFICATION DETER-  
20 MINATIONS.—The Secretary shall, to the greatest  
21 extent practicable, taking into account restrictions  
22 on the disclosure of classified or confidential infor-  
23 mation, publish in the Federal Register classification  
24 determinations made under paragraph (1).

1 **SEC. 8. PENALTIES, ADMINISTRATIVE PROCEDURES, AND**  
2 **SANCTIONS.**

3 (a) PENALTIES FOR VIOLATIONS.—

4 (1) CRIMINAL PENALTIES.—

5 (A) IN GENERAL.—Except as provided in  
6 subparagraph (B), whoever knowingly violates  
7 or conspires to or attempts to violate any provi-  
8 sion of this Act or any regulation, order, or li-  
9 cense issued under this Act shall be fined not  
10 more than 5 times the value of the exports in-  
11 volved or \$50,000, whichever is greater, or im-  
12 prisoned for not more than 5 years, or both.

13 (B) WILLFUL VIOLATIONS.—Whoever will-  
14 fully violates or conspires to or attempts to vio-  
15 late any provision of this Act or any regulation,  
16 order, or license issued under this Act, with  
17 knowledge that the exports involved will be used  
18 for the benefit of, or that the destination or in-  
19 tended destination of the goods or technology  
20 involved is, any controlled country or controlled  
21 enduser—

22 (i) except in the case of an individual,  
23 shall be fined not more than 10 times the  
24 value of the exports involved or  
25 \$2,000,000, whichever is greater; and

1                   (ii) in the case of an individual, shall  
2                   be fined not more than \$500,000, or im-  
3                   prisoned for not more than 10 years, or  
4                   both.

5                   (C) FAILURE TO REPORT MISUSE UNDER  
6                   LICENSE.—Any person who is issued a vali-  
7                   dated license under this Act for the export of  
8                   any commercial good or technology to a con-  
9                   trolled country and who, with knowledge that  
10                  such a good or technology is being used by such  
11                  controlled country for military or intelligence-  
12                  gathering purposes, or for purposes of enhanc-  
13                  ing capabilities described in section 4(a)(1)(B),  
14                  contrary to the conditions under which the li-  
15                  cense was issued, willfully fails to report such  
16                  use, shall be subject to the penalties set forth  
17                  in subparagraph (B).

18                  (D) INTENT TO VIOLATE CONTROLS.—Any  
19                  person who possesses any commercial goods or  
20                  technology—

21                         (i) with the intent to export or reex-  
22                         port such goods or technology in violation  
23                         of an export or reexport control imposed  
24                         under this Act, or any regulation, order, or

1 license issued with respect to such control,  
2 or

3 (ii) knowing or having reason to be-  
4 lieve that the goods or technology would be  
5 so exported or reexported,

6 shall be subject to the penalties set forth in  
7 subparagraph (B).

8 (E) EVASION OF CONTROLS.—Any person  
9 who takes any action with the intent to evade  
10 the provisions of this Act or any regulation,  
11 order, or license issued under this Act shall be  
12 subject to the penalties set forth in paragraph  
13 (B).

14 (2) CIVIL PENALTIES.—

15 (A) IN GENERAL.—The Secretary may im-  
16 pose a civil penalty of not more than \$250,000  
17 for each violation of this Act or any regulation,  
18 order, or license issued under this Act, either in  
19 addition to or in lieu of any other liability or  
20 penalty which may be imposed for such viola-  
21 tion.

22 (B) PAYMENT OF PENALTIES.—The pay-  
23 ment of any penalty imposed under this para-  
24 graph may be made a condition, for a period of  
25 not more than 1 year after the imposition of

1 such penalty, to the granting, restoration, or  
2 continuing validity of any license, permission, or  
3 privilege granted or to be granted under this  
4 Act to the person upon whom such penalty is  
5 imposed. In addition, the payment of any pen-  
6 alty imposed under this paragraph may be de-  
7 ferred or suspended in whole or in part for a  
8 period of time not longer than any probation  
9 period (which may exceed 1 year) that may be  
10 imposed upon such person. Such a deferral or  
11 suspension shall not operate as a bar to the col-  
12 lection of the penalty in the event that the con-  
13 ditions of the suspension, deferral, or probation  
14 are not fulfilled.

15 (C) REFUNDS.—Any amount paid in satis-  
16 faction of any penalty imposed under this para-  
17 graph, and any amounts realized from the for-  
18 feiture of any property interest or proceeds  
19 under subsection (b)(4), shall be covered into  
20 the Treasury as a miscellaneous receipt. The  
21 head of the department or agency concerned  
22 may, in his or her discretion, refund any such  
23 penalty imposed under this paragraph within 2  
24 years after payment, on the ground of a mate-  
25 rial error of fact or law in the imposition of the



1 penalty. Notwithstanding section 1346(a) of  
2 title 28, United States Code, no action for the  
3 refund of any such penalty may be maintained  
4 in any court.

5 (D) ACTIONS FOR RECOVERY OF PEN-  
6 ALTIES.—In the event of the failure of any per-  
7 son to pay a penalty imposed under this para-  
8 graph, a civil action for the summary collection  
9 of the penalty may, in the discretion of the  
10 head of the department or agency concerned, be  
11 brought in an appropriate United States dis-  
12 trict court in the name of the United States.

13 (E) CIVIL PENALTY STANDARDS.—The  
14 Secretary may by regulation provide standards  
15 for establishing levels of civil penalty under this  
16 paragraph based upon the seriousness of the  
17 violation, the culpability of the violator, and the  
18 violator's record of cooperation with the Gov-  
19 ernment in disclosing the violation.

20 (3) VIOLATIONS OF THE ACT.—Nothing in this  
21 paragraph shall limit the power of the Secretary to  
22 define by regulations violations under this Act.

23 (b) ADMINISTRATIVE SANCTIONS.—

24 (1) SUSPENSION, REVOCATION, AND DENIAL OF  
25 EXPORT PRIVILEGES.—The Secretary may suspend,

1       revoke, or deny the export or reexport privileges of  
2       any person who violates or conspires to or attempts  
3       to violate any provision of this Act or any regulation,  
4       order, or license issued under this Act.

5           (2) ELIGIBILITY FOR LICENSES.—No person  
6       convicted of a violation of this Act (or any regula-  
7       tion, order, or license issued under this Act), any  
8       regulation, license, or order issued under the Inter-  
9       national Emergency Economic Powers Act, section  
10      793, 794, or 798 of title 18, United States Code,  
11      section 4(b) of the Internal Security Act of 1950 (50  
12      U.S.C. 783(b)), or section 38 of the Arms Export  
13      Control Act (22 U.S.C. 2778) shall be eligible, at  
14      the discretion of the Secretary, to apply for or use  
15      any export license under this Act for a period of not  
16      more than 10 years from the date of the conviction.  
17      The Secretary may revoke any export license under  
18      this Act in which such person has an interest at the  
19      time of the conviction.

20           (3) RELATED PERSONS.—The Secretary may  
21      exercise the authority under paragraphs (1) and (2)  
22      with respect to any person related, through affili-  
23      ation, ownership, control, or position of responsibil-  
24      ity, to any person who has been sanctioned under  
25      this subsection, upon a showing of such relationship

1 with the sanctioned party and a finding that such  
2 action is necessary to prevent an imminent violation  
3 of this Act or any regulation, order, or license issued  
4 under this Act, and subject to the procedures set  
5 forth in subsection (c).

6 (4) FORFEITURE OF PROPERTY INTEREST AND  
7 PROCEEDS.—

8 (A) IN GENERAL.—Any person who is con-  
9 victed under subsection (a)(1) of a violation of  
10 an export or reexport control imposed under  
11 this Act or any regulation, order, or license is-  
12 sued under this Act shall, in addition to any  
13 other penalty, forfeit to the United States—

14 (i) any of that person's interest in, se-  
15 curity of, claim against, or property or  
16 contractual rights of any kind in the goods  
17 or tangible items that were the subject of  
18 the violation;

19 (ii) any of that person's interest in,  
20 security of, claim against, or property or  
21 contractual rights of any kind in tangible  
22 property that was used in the export or re-  
23 export or attempt to export or reexport  
24 that was the subject of the violation; and

1 (iii) any of that person's property con-  
2 stituting or derived from any proceeds ob-  
3 tained directly or indirectly as a result of  
4 the violation.

5 (B) PROCEDURE.—The procedures in any  
6 forfeiture under this paragraph, and the duties  
7 and authority of the courts of the United States  
8 and the Attorney General with respect to any  
9 forfeiture action under this paragraph or with  
10 respect to any property that may be subject to  
11 forfeiture under this paragraph, shall be gov-  
12 erned by the provisions of section 1963 of title  
13 18, United States Code.

14 (c) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
15 VIEW.—

16 (1) ADMINISTRATIVE PROCEDURES RELATING  
17 TO CIVIL PENALTIES AND ADMINISTRATIVE SANC-  
18 TIONS.—

19 (A) FORMAL COMPLAINT.—In any case in  
20 which a civil penalty or administrative sanction  
21 (other than a temporary denial order) is sought  
22 under this section, the charged party is entitled  
23 to receive a formal complaint specifying the  
24 charges and, at his or her request, to contest

1 the charges in a hearing before an administra-  
2 tive law judge.

3 (B) HEARING PROCEDURES.—Subject to  
4 the provisions of this subsection, any such hear-  
5 ing shall be conducted in accordance with sec-  
6 tions 556 and 557 of title 5, United States  
7 Code.

8 (C) PRESENTATION OF EVIDENCE IN CAM-  
9 ERA.—In any such hearing the Government  
10 may, with the approval of the administrative  
11 law judge, present evidence in camera in the  
12 presence of the charged party or his or her rep-  
13 resentative.

14 (D) POST-HEARING ACTION BY THE SEC-  
15 RETARY.—After the hearing, the administrative  
16 law judge shall make findings of fact and con-  
17 clusions of law in a written decision, which shall  
18 be referred to the Secretary. The Secretary  
19 shall, in a written order, affirm, modify, or va-  
20 cate the decision of the administrative law  
21 judge not later than 30 days after receiving the  
22 decision.

23 (E) TIMING.—The proceedings described  
24 in this subsection shall be concluded not later  
25 than 1 year after the complaint is submitted,

1           unless the administrative law judge extends  
2           such period for good cause shown.

3           (F) FINAL ORDERS; APPEAL.—The order  
4           of the Secretary under subparagraph (D) shall  
5           be final and may be appealed in accordance  
6           with paragraph (4).

7           (2) ADMINISTRATIVE PROCEDURES FOR THE  
8           IMPOSITION OF TEMPORARY DENIAL ORDERS.—

9           (A) IN GENERAL.—In any case in which it  
10          is necessary, in the public interest, to prevent  
11          an imminent violation of this Act or any regula-  
12          tion, order, or license issued under this Act, the  
13          Secretary may, without a hearing, issue an  
14          order temporarily denying United States export  
15          or reexport privileges (hereafter in this sub-  
16          section referred to as a “temporary denial  
17          order”) to a person. A temporary denial order  
18          may be effective no longer than 180 days (un-  
19          less renewed in writing by the Secretary for an  
20          additional period of not more than 180 days) in  
21          order to prevent such an imminent violation, ex-  
22          cept that a temporary denial order may be re-  
23          newed only after notice and an opportunity for  
24          a prompt hearing is provided.

1 (B) CONTENTS.—A temporary denial order  
2 shall define the imminent violation and state  
3 why the temporary denial order was granted  
4 without a hearing. The person or persons sub-  
5 ject to the issuance or renewal of a temporary  
6 denial order may file an appeal of the issuance  
7 or renewal of the temporary denial order with  
8 an administrative law judge who shall, not more  
9 than 10 working days after the appeal is filed,  
10 recommend that the temporary denial order be  
11 affirmed, modified, or vacated. Parties may  
12 submit briefs and other material to the judge.  
13 The recommendation of the administrative law  
14 judge shall be submitted to the Secretary who  
15 shall either accept, reject, or modify the rec-  
16 ommendation by written order not more than 5  
17 working days after receiving the recommenda-  
18 tion. The written order of the Secretary under  
19 the preceding sentence shall be final and may  
20 be appealed as provided in paragraph (4). The  
21 temporary denial order shall be affirmed only if  
22 it is reasonable to believe that the order is re-  
23 quired in the public interest to prevent an im-  
24 minent violation of this Act or any regulation,  
25 order, or license issued under this Act. All ma-

1           terials submitted to the administrative law  
2           judge and the Secretary under this paragraph  
3           shall constitute the administrative record for  
4           purposes of review by the courts.

5           (3) ADMINISTRATIVE LAW JUDGES.—Adminis-  
6           trative law judges referred to in paragraphs (1) and  
7           (2)(B) shall be appointed by the Secretary from  
8           among those considered qualified for selection and  
9           appointment under section 3105 of title 5, United  
10          States Code.

11          (4) JUDICIAL REVIEW.— Any final agency ac-  
12          tion under this Act may be reviewed by appeal to the  
13          United States Court of Appeals for the Federal Cir-  
14          cuit.

15          (d) SANCTIONS AGAINST CERTAIN PERSONS.—

16                (1) IN GENERAL.—Except as provided in para-  
17                graph (5), the President may impose the sanctions  
18                described in paragraph (3) if the President deter-  
19                mines that a person has knowingly and materially  
20                contributed—

21                    (A) through the export from the United  
22                    States of any commercial goods or technology  
23                    that are subject to the jurisdiction of the Unit-  
24                    ed States under this Act, or



1 (B) through the export from any other  
2 country of any commercial goods or technology  
3 that constitutes a violation of any regulation is-  
4 sued by that country to control exports pursu-  
5 ant to an export control regime,  
6 to the efforts by any controlled country or controlled  
7 enduser to use, develop, produce, stockpile, or other-  
8 wise acquire chemical or biological weapons, nuclear  
9 materials and equipment (as defined in section 4(4)  
10 of the Nuclear Non-Proliferation Act of 1978) or  
11 any nuclear explosive device, or any missile equip-  
12 ment or technology.

13 (2) PERSONS AGAINST WHICH SANCTIONS ARE  
14 TO BE IMPOSED.—Sanctions shall be imposed under  
15 paragraph (1) on—

16 (A) the person with respect to whom the  
17 President makes the determination described in  
18 that paragraph;

19 (B) any successor entity to that person;  
20 and

21 (C) any parent, subsidiary, or affiliate of  
22 that person if that parent, subsidiary, or affili-  
23 ate knowingly and materially contributed to the  
24 activities that were the basis of that determina-  
25 tion.

1           (3) SANCTIONS.—The sanctions to be imposed  
2       under paragraph (1) are—

3           (A) denial of licenses to the sanctioned  
4       person to export or reexport, and denial of li-  
5       censes to United States persons to export or re-  
6       export to the sanctioned person, commercial  
7       goods and technology to the same intent as the  
8       export or reexport of such goods or technology  
9       is controlled under this Act;

10          (B) a prohibition on contracting with, and  
11       procurement of products and services from, the  
12       sanctioned person by any department, agency,  
13       of instrumentality of the United States Govern-  
14       ment; and

15          (C) a prohibition on the importation into  
16       the United States of products produced by the  
17       sanctioned person.

18       (4) CONSULTATIONS WITH FOREIGN GOVERN-  
19       MENTS OF JURISDICTION.—If the President makes a  
20       determination in paragraph (1) with respect to a  
21       foreign person, the President shall immediately initi-  
22       ate consultations with the government of the country  
23       of which that foreign person is a national with re-  
24       spect to the imposition of sanctions under this sec-  
25       tion.

1           (5) INAPPLICABILITY.—Sanctions set forth in  
2       paragraph (3) may not be imposed on a foreign per-  
3       son with respect to acts described in paragraph (1)  
4       if the government of the country of which that for-  
5       eign person is a national is a member of an export  
6       control regime certified under section 4(d)(2) or a  
7       cooperating country with respect to such regime, un-  
8       less a determination made with respect to such  
9       country under section 4(d)(5)(C) is in effect.

10          (6) TERMINATION OF SANCTIONS.—Sanctions  
11       imposed under this subsection shall apply for a pe-  
12       riod at least one year beginning on the date on  
13       which the sanctions are imposed. Such sanctions  
14       shall cease to apply, in the case of a foreign person,  
15       at such time as paragraph (5) applies. The sanctions  
16       shall cease to apply after the end of the 1-year pe-  
17       riod described in the first sentence if the President  
18       determines that the person with respect to whom the  
19       determination was made under paragraph (1) has  
20       ceased all activities described in paragraph (1) that  
21       were the subject of the violation and has taken ap-  
22       propriate steps to ensure that such activities will not  
23       take place in the future.

24          (e) OTHER AUTHORITIES.—Nothing in this section  
25       limits—

1           (1) the availability of other administrative or  
2       judicial remedies with respect to violations of this  
3       Act or any regulation, order, or license issued under  
4       this Act;

5           (2) the authority to compromise and settle ad-  
6       ministrative proceedings brought with respect to vio-  
7       lations of this Act or any regulation, order, or li-  
8       cense issued under this Act; or

9           (3) the authority to compromise, remit, or miti-  
10      gate seizures and forfeitures under section 1(b) of  
11      title VI of the Act of June 15, 1917 (22 U.S.C.  
12      401(b)).

13 **SEC. 9. DEFINITIONS; REPORTS.**

14       (a) DEFINITIONS.—Except as otherwise provided in  
15      this Act, as used in this Act:

16           (1) AUSTRALIA GROUP.—The term “Australia  
17      Group” means a group of countries that have agreed  
18      to restrict the sale of chemical weapons precursors  
19      and equipment, including, as of the date of the en-  
20      actment of this Act, Australia, Austria, Belgium,  
21      Canada, Denmark, Finland, France, Germany,  
22      Greece, Ireland, Italy, Japan, Luxembourg, the  
23      Netherlands, New Zealand, Norway, Portugal,  
24      Spain, Sweden, Switzerland, the United Kingdom,  
25      and the United States.

1           (2) CECA.—The term “CECA” means the  
2       Commercial Export Control Administration estab-  
3       lished in section 6(c).

4           (3) COCOM.—The term “COCOM” means the  
5       Coordinating Committee for Multilateral Export  
6       Controls, a non-treaty organization created in 1949  
7       that—

8                 (A) cooperatively restricts exports of goods  
9                 and technology to certain countries;

10                (B) collectively determines the goods and  
11                technology that are so restricted and the des-  
12                tinations to which exports are so restricted; and

13                (C) as of the date of the enactment of this  
14                Act, includes Australia, Belgium, Canada, Den-  
15                mark, Finland, France, Germany, Greece, Italy,  
16                Japan, Luxembourg, the Netherlands, Norway,  
17                Portugal, Spain, Sweden, Turkey, the United  
18                Kingdom, and the United States.

19           (4) COMMERCIAL GOODS AND TECHNOLOGY.—  
20       The term “commercial goods and technology” means  
21       goods and technology that were developed or are em-  
22       ployed for bona fide civilian endusers.

23           (5) COMMITTEE.—The term “Committee”  
24       means the Commercial Export Control Policy Com-  
25       mittee established in section 6(b).

1           (6) CONTROL INDEX.—The term “control  
2       index” means the United States Commercial Export  
3       Control Index established under section 3(b)(1).

4           (7) CONTROLLABLE.—The term “controllable”  
5       means capable of being made subject to an effective  
6       prohibition or significant restriction on exports. A  
7       good or technology shall not be considered to be con-  
8       trollable unless it is—

9                   (A) manufactured or sold by only a modest  
10       number of suppliers who can be positively iden-  
11       tified;

12                   (B) consumed or used by only a modest  
13       number of endusers who can be positively iden-  
14       tified and whose export activities can be con-  
15       trolled; and

16                   (C) individually traceable or not easily con-  
17       cealed or disguised.

18           (8) CONTROLLED COUNTRY AND CONTROLLED  
19       ENDUSER.—(A) The term “controlled country”  
20       means a country identified under section 4(b)(4).  
21       The term “controlled enduser” means an enduser  
22       identified under section 4(b)(4).

23                   (B) The term “controlled enduser” means an  
24       enduser identified under section 4(b)(4).

1           (9) COOPERATING COUNTRY.—The term “co-  
2       operating country” means a country which has en-  
3       tered into an agreement with the United States or  
4       an export control regime on maintaining export re-  
5       strictions comparable in practice to those maintained  
6       by such export control regime.

7           (10)(A) ENDUSE.—The term “enduse” means  
8       the intended application or use of an item as rep-  
9       resented to an export license applicant by the im-  
10      porter of the item in another country.

11          (B) ENDUSER.—The term “enduser” means  
12      the person located abroad who is the true party in  
13      interest in actually receiving an export for the end-  
14      use designated for the export.

15          (11) EXPORT.—The term “export” means an  
16      actual shipment, transfer, or transmission of goods  
17      or technology out of the United States.

18          (12) EXPORT CONTROL REGIME.—The term  
19      “export control regime” means a system of export  
20      controls agreed to and maintained by the United  
21      States and one or more other countries and includes  
22      COCOM, the Australia Group, the MTCR, and the  
23      Nuclear Supplies Group.

24          (13) EXPORT LICENSE APPLICATION.—The  
25      term “export license application” means a request

1 for permission or authorization to export or reexport  
2 a commercial good or technology the export of which  
3 is controlled under this Act.

4 (14) FOREIGN AVAILABILITY.—The term “for-  
5 eign availability” means the availability within con-  
6 trolled countries or to controlled countries or con-  
7 trolled endusers without restriction from sources  
8 outside the United States of commercial goods and  
9 technology that would reasonably be considered to  
10 substitute for those produced in the United States  
11 or other countries that participate with the United  
12 States in export control regimes so as to render ex-  
13 port and reexport controls imposed by the United  
14 States or such regimes on such goods or technology  
15 so produced ineffective in achieving their intended  
16 purpose. A determination of foreign availability of a  
17 good or technology from sources outside the United  
18 States shall be made only after considering the avail-  
19 ability of such good or technology—

20 (A) within a controlled country;

21 (B) from any country from which exports  
22 to a controlled country or controlled enduser of  
23 the good or technology are not restricted; and

24 (C) from countries that participate with  
25 the United States in export control regimes to



1           the extent that export and reexport restrictions  
2           on the good or technology maintained by such  
3           countries are determined by the Secretary to be  
4           ineffective.

5           (15) FOREIGN PERSON.—The term “foreign  
6           person” means—

7                   (A) an individual who is not a citizen of  
8                   the United States or a “protected individual”  
9                   as defined in section 274B of the Immigration  
10                  and Nationality Act (8 U.S.C. 1324b(a)(3));  
11                  and

12                  (B) a corporation, partnership, or other  
13                  entity that is created or organized under the  
14                  laws of a foreign country or that has its prin-  
15                  cipal place of business outside the United  
16                  States.

17           (16) GOOD.—The term “good” means any arti-  
18           cle, natural or manmade substance, material, supply,  
19           or manufactured product, including inspection and  
20           test equipment, and excluding technical data.

21           (17) MISSILE TECHNOLOGY CONTROL REGIME;  
22           MTCR.—The term “Missile Technology Control Re-  
23           gime” or “MTCR” means the policy statement be-  
24           tween the United States, the United Kingdom, the  
25           Federal Republic of Germany, France, Italy, Can-

1       ada, and Japan, announced on April 16, 1987, to re-  
2       strict sensitive missile-relevant transfers based on  
3       the MTCR Annex, and any amendments thereto,  
4       which, as of the date of the enactment of this Act,  
5       includes the each of those countries and Australia,  
6       Austria, Belgium, Denmark, Finland, Luxembourg,  
7       the Netherlands, Norway, Sweden, New Zealand,  
8       and Spain.

9           (18) MISSILE EQUIPMENT OR TECHNOLOGY;  
10       MTCR EQUIPMENT OR TECHNOLOGY.—The terms  
11       “missile equipment or technology” and “MTCR  
12       equipment or technology” mean those items listed in  
13       the MTCR Annex.

14           (19) MTCR annex.—The term “MTCR Annex”  
15       means the Guidelines and Equipment and Tech-  
16       nology Annex of the MTCR, and any amendments  
17       thereto.

18           (20) NON-REGIME COUNTRY.—The term “non-  
19       regime country” means a country that is not a mem-  
20       ber of an export control regime and is not a cooper-  
21       ating country.

22           (21) NUCLEAR SUPPLIERS’ GROUP.—The term  
23       “Nuclear Suppliers’ Group” means a group of coun-  
24       tries that—

1 (A) in 1978, committed themselves to pro-  
2 hibit the export of certain nuclear-related goods  
3 and technology unless the importing country  
4 agreed to a pledge of “no explosive use” and to  
5 acceptance of safeguards by the International  
6 Atomic Energy Agency; and

7 (B) as of the date of the enactment of this  
8 Act, is comprised of Australia, Austria, Bel-  
9 gium, Bulgaria, Canada, Czech Republic, Den-  
10 mark, Finland, France, Germany, Greece, Hun-  
11 gary, Ireland, Italy, Japan, Luxembourg, the  
12 Netherlands, Norway, Poland, Portugal, Roma-  
13 nia, Russia, Slovak Republic, Spain, Sweden,  
14 Switzerland, the United Kingdom, and the  
15 United States.

16 (22) PERSON.—The term “person” includes the  
17 singular and the plural and any individual, partner-  
18 ship, corporation, or other form of association, in-  
19 cluding any government or agency thereof.

20 (23) REEXPORT.—The term “reexport” means  
21 an actual shipment, transfer, or transmission of  
22 U.S.-origin goods or technology from one foreign  
23 country to another.

24 (24) MEMBER OF AN EXPORT CONTROL RE-  
25 GIME.—A “member” of an export control regime is

1 a country that is a participant in that export control  
2 regime.

3 (25) SECRETARY.—The term “Secretary”  
4 means the Secretary of Commerce.

5 (26) SECURITY CONTROL LIST.—The term “se-  
6 curity control list” means the list established under  
7 section 4(b).

8 (27) TECHNOLOGY.—The term “technology”  
9 means the information and know how (whether in  
10 tangible form, such as models, prototypes, drawings,  
11 sketches, diagrams, blueprints, or manuals, or in in-  
12 tangible form, such as training or technical services)  
13 that can be used to design, produce, manufacture,  
14 utilize, or reconstruct goods, including computer  
15 software and technical data, but not the goods them-  
16 selves.

17 (28) UNITED STATES.—The term “United  
18 States” means the States of the United States, the  
19 District of Columbia, and any commonwealth, terri-  
20 tory, dependency, or possession of the United States,  
21 and includes the outer Continental Shelf, as defined  
22 in section 2(a) of the Outer Continental Shelf Lands  
23 Act (43 U.S.C. 1331(a)).

24 (29) UNITED STATES PERSON.—The term  
25 “United States person” means—

1 (A) any United States resident or national,  
2 including any “protected individual” as defined  
3 in section 274B of the Immigration and Na-  
4 tionality Act (8 U.S.C. 1324b(a)(3)), but not  
5 including an individual resident outside the  
6 United States and employed by other than a  
7 United States person;

8 (B) any domestic concern (including any  
9 permanent domestic establishment of any for-  
10 eign concern); and

11 (C) any foreign subsidiary or affiliate (in-  
12 cluding any permanent foreign establishment)  
13 of any domestic concern which is controlled in  
14 fact by such domestic concern, as determined  
15 under regulations of the President.

16 (30) U.S. ORIGIN.—The term “U.S.-origin”  
17 means, with respect to a good or technology, that  
18 the good or technology, when imported into a foreign  
19 country, is treated as a product of the United States  
20 for purposes of that country’s customs laws.

21 (31) WEAPONS OF MASS DESTRUCTION.—The  
22 term “weapons of mass destruction” refers to chemi-  
23 cal, biological, and nuclear weapons, and missiles ca-  
24 pable of delivering such weapons.

1 (b) ANNUAL REPORT.—Not later than December 31  
2 of each year, the Secretary shall submit to the Congress  
3 a report on the administration of this Act during the pre-  
4 ceding fiscal year. Such report shall include detailed infor-  
5 mation with respect to—

6 (1) the implementation of the policies set forth  
7 in section 2;

8 (2) export licensing activities under sections 4  
9 and 5, and any changes in the exercise of the au-  
10 thorities contained in those sections, including a re-  
11 port on all export license applications pending be-  
12 yond the deadlines contained in section 7;

13 (3) designations under section 4(a)(3) of con-  
14 trolled countries and controlled endusers, and any  
15 changes in such designations;

16 (4) the results, in as much detail as may be in-  
17 cluded consistent with the national security and the  
18 need to maintain the confidentiality of proprietary  
19 information, of the review and revision of the control  
20 index required by section 3(b)(4);

21 (5) any emergency sanctions imposed under  
22 section 5(a), and the results of negotiations required  
23 by section 5(a)(3)(F);

24 (6) determinations of foreign availability made  
25 under section 3(g), the criteria used to make such

1 determinations, and the removal of any export or re-  
2 export controls as a result of such determinations;

3 (7) consultations with and recommendations of  
4 the industry advisory committees established under  
5 section 6(d) and the use made of the advice given  
6 by such committees;

7 (8) organizational and procedural changes un-  
8 dertaken in furtherance of the policies set forth in  
9 this Act, including changes to increase the efficiency  
10 of the export licensing process; and

11 (9) violations, enforcement activities, and any  
12 sanctions imposed under section 8.

13 **SEC. 10. EFFECT ON OTHER ACTS; CONFORMING AMEND-**  
14 **MENTS.**

15 (a) IN GENERAL.—To the extent provided in this  
16 Act, this Act shall be construed to modify, repeal, super-  
17 sede, and otherwise affect the provisions of other laws au-  
18 thorizing control over exports of commercial goods and  
19 technology.

20 (b) COORDINATION OF CONTROLS.—

21 (1) NUCLEAR NON-PROLIFERATION ACT OF  
22 1978.—The requirement in section 309(c) of the Nu-  
23 clear Non-Proliferation Act of 1978 for procedures  
24 that provide for prior consultations with other agen-  
25 cies, and any procedure published by the President

1 pursuant to that section, shall be deemed to be met  
2 by the deliberations of the Committee regarding the  
3 policy for exports and reexports of goods and tech-  
4 nology to which such section 309(c) applies.

5 (2) AUTHORITY UNDER OTHER ACTS.—The au-  
6 thority granted to the President under section  
7 203(a)(1)(B) of the International Emergency Eco-  
8 nomic Powers Act (50 U.S.C. 1702(a)(1)(B)) and  
9 section 5(b)(1)(B) of the Trading with the Enemy  
10 Act (50 U.S.C. App. 5(b)(1)(B)) with respect to li-  
11 censing or control of exports and reexports of com-  
12 mercial goods and technology and related services  
13 shall be delegated to the Secretary.

14 (c) COMMODITY JURISDICTION.—

15 (1) IN GENERAL.—Notwithstanding any other  
16 provision of law—

17 (A) an item agreed for control on the  
18 International Munitions List of COCOM shall  
19 be subject to control under the Arms Export  
20 Control Act and not under this Act;

21 (B) except as provided in paragraphs (2)  
22 and (4), an item which is on the International  
23 Industrial List of COCOM shall be subject to  
24 control under this Act and not under the Arms  
25 Export Control Act; and



1 (C) no item may be included on both the  
2 security control list and the United States Mu-  
3 nitions List after publication of the lists re-  
4 quired under paragraph (3) and resolution of  
5 any dispute with respect to such lists under  
6 paragraph (4).

7 (2) EXCEPTIONS.—

8 (A) An item described in subparagraph (B)  
9 that is not on the International Munitions List  
10 may be subject to control under the Arms Ex-  
11 port Control Act—

12 (i)(I) for a period of 9 months after  
13 the date on which the United States pro-  
14 poses to COCOM that the item be added  
15 to the International Munitions List, and

16 (II) for an additional 9-month period,  
17 but only if negotiations in COCOM to add  
18 the item to the International Munitions  
19 List are continuing; or

20 (ii) if the Secretary of State, in con-  
21 sultation with the Secretary, so deter-  
22 mines, except that if the Secretary dis-  
23 agrees with the Secretary of State with re-  
24 spect to such item, the item may be sub-  
25 ject to control under the Arms Export

1 Control Act only if the disagreement is re-  
2 solved by the Secretaries or by the Presi-  
3 dent pursuant to the procedures set forth  
4 in subparagraphs (B) and (C) of para-  
5 graph (4).

6 (B) An item referred to in subparagraph  
7 (A) is an item that—

8 (i) is specifically designed or devel-  
9 oped for military application;

10 (ii) does not have bona fide civilian  
11 applications; and

12 (iii) does not have performance equiv-  
13 alent in form and function to those of an  
14 article or service used for civilian applica-  
15 tions.

16 (3) PUBLICATION OF LISTS.—

17 (A) Not later than 3 months after the date  
18 of the enactment of this Act, the Secretary shall  
19 publish the security control list and the Sec-  
20 retary of State shall publish the United States  
21 Munitions List, with all revisions that have  
22 been made in accordance with this subsection.

23 (B) Not later than 3 months after the date  
24 of the enactment of this Act, the Secretary of  
25 State shall publish in a separate list those items

1 remaining subject to control under the Arms  
2 Export Control Act under paragraph (2).

3 (C) If either the Secretary or the Secretary  
4 of State fails to publish a revised list in accord-  
5 ance with subparagraph (A), there shall be ex-  
6 cluded from the list of the Secretary that did  
7 not so publish a revised list any item included  
8 on the list of the Secretary that did so publish  
9 a revised list.

10 (4) COMMODITY JURISDICTION DISPUTE RESO-  
11 LUTION.—

12 (A) Whenever—

13 (i) the Secretary or the Secretary of  
14 State receives a request to determine  
15 whether an item is subject to control under  
16 this Act or the Arms Export Control Act;

17 (ii) either Secretary finds that an item  
18 is included on both the security control  
19 index and the United States Munitions  
20 List;

21 (iii) an item appearing on the list of  
22 one Secretary under paragraph (3)(A) is  
23 considered by the other Secretary to be  
24 under the jurisdiction of that other Sec-  
25 retary; or

1           (iv) the Secretary disagrees with the  
2           inclusion of an item on the list published  
3           under paragraph (3)(B);  
4           the Secretary or the Secretary of State (as the  
5           case may be) shall refer the matter and any rel-  
6           evant information to the other Secretary.

7           (B) The 2 Secretaries shall have a period  
8           of 15 days following the referral of a matter  
9           under subparagraph (A) to resolve any dif-  
10          ferences with respect to the matter involved.

11          (C) If the 2 Secretaries fail to resolve such  
12          differences within that 15-day period, either  
13          Secretary may refer the matter to the President  
14          who, not later than 15 days after receiving the  
15          referral, shall notify the 2 Secretaries of his de-  
16          termination on the matter in dispute.

17          (D) In resolving disputes under subpara-  
18          graph (C), the President may decide that an  
19          item which is not on the International Muni-  
20          tions List is subject to control under the Arms  
21          Export Control Act only if the President—

22               (i) determines that extraordinary cir-  
23               cumstances exist affecting the national se-  
24               curity of the United States, which require

1           that the item be controlled under the Arms  
2           Export Control Act;

3           (ii) proposes to COCOM that the item  
4           be added to the International Munitions  
5           List; and

6           (iii) not later than 10 days after mak-  
7           ing the determination under clause (i),  
8           submits a report to the Speaker of the  
9           House of Representatives and the Presi-  
10          dent pro tempore of the Senate, describing  
11          in detail the reasons for the determination,  
12          in appropriate classified form, as nec-  
13          essary.

14          (E) If either the Secretary or the Secretary  
15          of State does not respond to a referral under  
16          subparagraph (A), the Secretary that did not so  
17          respond shall be deemed to concur with the  
18          other Secretary on the matter involved.

19          (d) AMENDMENTS TO THE INTERNATIONAL EMER-  
20          GENCY ECONOMIC POWERS ACT.—

21               (1) LIMITATION ON AUTHORITY.—Section  
22          203(a)(1) of the International Emergency Economic  
23          Powers Act (50 U.S.C. 1706) is amended by adding  
24          at the end the following:

1 “The President may prohibit or curtail the exportation  
 2 and reexportation of any commercial goods or technology  
 3 subject to the jurisdiction of the United States under this  
 4 title only to the extent provided, and subject to the criteria  
 5 set forth in, sections 4 and 5 of the Commercial Export  
 6 Administration Act of 1993, unless such prohibition or  
 7 curtailment is part of a total embargo of all exports and  
 8 imports (other than exports of items described in section  
 9 7(b)(6) of such Act).”.

10 (2) EXTENSION OR REINSTATEMENT OF EX-  
 11 PIRED PROVISION OF LAW.—Section 207 of the  
 12 International Emergency Economic Powers Act (50  
 13 U.S.C. 1706) is amended—

14 (A) by redesignating subsections (c) and  
 15 (d) as subsections (d) and (e), respectively, and  
 16 (B) by inserting after subsection (b) the  
 17 following new subsection:

18 “(c) EXPIRED LEGISLATIVE AUTHORITY.—The  
 19 President may use the authority of this Act to extend or  
 20 reinstate an expired provision of the Commercial Export  
 21 Administration Act of 1993 for only one period of not  
 22 more than 180 days after the date of such expiration.”.

23 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS; TERMI-**  
 24 **NATION DATE.**

25 (a) AUTHORIZATION OF APPROPRIATIONS.—

1           (1) REQUIREMENT OF AUTHORIZING LEGISLA-  
2           TION.—

3           (A) Notwithstanding any other provision of  
4           law, money appropriated to the Department of  
5           Commerce to carry out the purposes of this Act  
6           may be obligated or expended only if—

7                   (i) the appropriation thereof has been  
8                   previously authorized by law enacted on or  
9                   after the date of the enactment of this Act;  
10                  or

11                  (ii) the amount of all such obligations  
12                  and expenditures does not exceed an  
13                  amount previously prescribed by law en-  
14                  acted on or after such date.

15           (B) To the extent that legislation enacted  
16           after the making of an appropriation to carry  
17           out the purposes of this Act authorizes the obli-  
18           gation or expenditure thereof, the limitation in  
19           subparagraph (A) shall have no effect.

20           (2) AUTHORIZATION.—There are authorized to  
21           be appropriated to the Department of Commerce  
22           such sums as may be necessary to carry out the pur-  
23           poses of this Act.

24           (b) TERMINATION DATE.—

1           The authority granted by this Act terminates  
2           on September 30, 2000.

3   **SEC. 12. MISCELLANEOUS PROVISIONS.**

4           (a) AMENDMENTS TO TITLE 5, UNITED STATES  
5   CODE.—(1) Section 5314 of title 5, United States Code,  
6   is amended—

7           (A) by striking “Under Secretary of Commerce  
8           for Export Administration”; and

9           (B) by adding at the end the following:

10           “Director, Commercial Export Control Adminis-  
11           tration.”.

12           (2) Section 5315 of title 5, United States Code, is  
13   amended—

14           (A) in the item relating to Assistant Secretaries  
15           of Commerce, by striking “(11)” and inserting  
16           “(9)”; and

17           (B) by adding at the end the following:

18           “Deputy Director, Commercial Export Control  
19           Administration.

20           “Assistant Director for Export Control, Com-  
21           mercial Export Control Administration.

22           “Assistant Director for Enforcement and Com-  
23           pliance, Commercial Export Control Administration.

24           “Assistant Director for Security and Intel-  
25           ligence, Commercial Export Control Administration.



1           “Assistant Director for Nonproliferation, Com-  
2           mercial Export Control Administration.

3           “Chief Negotiator, Commercial Export Control  
4           Administration.”.

5           (b) EXPORT ADMINISTRATION ACT OF 1979.—Upon  
6           the effective date of this Act, sections 5, 6 (except to the  
7           extent provided in section 8(b)), 11A, 11B, 11C, 10(h),  
8           and 10(o) of the Export Administration Act of 1979, and  
9           section 6 of that Act (except to the extent provided in sec-  
10          tion 8(b) of that Act), shall cease to be effective, and all  
11          other provisions of that Act to the extent such provisions  
12          apply to such ineffective sections shall cease to be effec-  
13          tive.

14          (c) SAVINGS PROVISIONS.—

15               (1) IN GENERAL.—All delegations, rules, regu-  
16               lations, orders, determinations, licenses, or other  
17               forms of administrative action which—

18                     (A) have been made, issued, conducted, or  
19                     allowed to become effective—

20                               (i) under provisions of the Export Ad-  
21                               ministration Act of 1979 referred to in  
22                               subsection (b), or

23                               (ii) in the exercise of functions trans-  
24                               ferred by this Act, and

1 (B) are in effect at the time this Act takes  
 2 effect,  
 3 shall continue in effect according to their terms until  
 4 modified, superseded, set aside, or revoked under  
 5 this Act.

6 (b) ADMINISTRATIVE PROCEEDINGS.—This Act shall  
 7 not apply to any administrative proceedings commenced  
 8 or any application for a license made, under the Export  
 9 Administration Act of 1979 or in the exercise of functions  
 10 transferred by this Act, which is pending at the time this  
 11 Act takes effect.

12 (d) EFFECTIVE DATE.—This Act takes effect on the  
 13 date of the enactment of this Act.

○

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